

Jo: Leigh. pr: 12

Jus Anglorum ab Antiquo :

OR, A

CONFUTATION

OF AN

Impotent

LIBEL

Against the

Government

BY

King, Lords, *and* Commons.

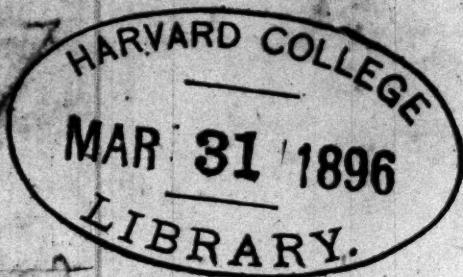
Under pretence of Answering Mr. PETTY, and the
Author of *Jani Anglorum Facies Nova.*

WITH

A SPEECH, according to the Answerer's
Principles, made for the PARLIAMENT
at OXFORD.

Ne Sutor ultra crepidam.

L O N D O N,
Printed for Edward Berry, in Holborn-Court
in Grays-Inn, 1681.



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1896

THE PREFACE.

THere was a Book lately publish'd
against Mr. Petyt and my Self,
which not only treats us with Pe-
dantick Scorn, like those that
are to Cap the Author within his Colledge:
but it seems, to trample on the best Consti-
tution, our Government it self, under Co-
lour of its being New in the 49th. of Hen. 3. Against
when it arose out of the indigested Matter Mr. Petyt.
of Tumults and Rebellion; and so not ha- P. 110.
ving a Legitimate Birth, as not born in Wed-
lock between the King and his People, it
may be turn'd out of Doors, by the Help of
that Maxim.

Quod initio non valet, tractu temporis
non convalescit.

How can a Bastard become a Mulier?

The Treatise which was to prove the Fact, Against
was cried up for unanswerable; and per- Jan. &c.
haps, 'twas imagined, that there was no P. 1.
possibility left for a Reply; since the Writer, Matter of
who has render'd himself famous in his Ge- Fact only.
a generation,

The Preface.

neration (as if he knew better how to manage a Design than an Argument) pass'd it about, only to such Hands as were obliged by Promise, if not by Principle, to conceal it.

But Mr. Petyt, and my Self, having by Accident seen his Book, and observed some Heads which we intended to expose to the World: At last, out comes the happy Birth; yet 'twas hoped, that by that time, there might be Profelytes enough to defend it, with Noise and Acclamations, and Contempt of all Opposers, Records, Ancient Historians, and our Ancient or Modern Lawyers.

Though generally, in a Matter of Argument, we ought to leave to the Reader, the Censure of what we think we confute, without remarking how absurd or criminal it is; yet when such Reflections are almost the only Arguments on the other side, and they, when pronounc'd, tanquam *Cathedrâ* must have some Authority, 'tis fit, that even these trifles should have their due, provided they be answered with Decency of Expression: And we know in what manner the Wise Man advises us to answer some People.

I should have been glad if this Author's Civility had obliged me to treat him at another Rate than I do; since I delight not in this

The Preface.

this way, nor think thereby to please such Readers as I would court to be Judges between us.

But why should I Apologize for the managing of this Controversie in a way wholly New to me? Since the severest Expressions are but retorted and transcrib'd from our Answerer's Original; and indeed it may well be an Original, for 'tis without Example.

If in any thing I seem intemperate, I may say with an Author well known, Excess of Truth has made me so.

Our Author's very Notions are Satyr's upon themselves; nor can any thing more expose a Man, than a seemingly Gigantick Endeavour to remove the fix'd Stars, the Lords from the Firmament, where each shines in his settled Station; and to take from the Commons of England, that Spot of Earth which they enjoy, and tread on.

While the Sons of Titan lay Pelion upon Ossa, one Mountainous Fiction upon another, the Mountains have a quick Delivery, and bring forth Confusion to the Giants.

What has been the Product of his many Years Labours, I think may be
a 2 *shewn*

The Preface.

shewn in Miniature, under these Heads.

Against
Mr. Petyt.
p. 29, 30,
31, 32, 33,
34, 35, 36
p. 176.

(1.) *That the Norman Prince, against his reiterated Promises, and against the great Obligation of Gratitude to those of the English who assisted him, took away all their Lands and Properties, and left them no Right or Law.*

ib. p. 39.

(2.) *That from the Reputed Conquest, and long before, under the British and Saxon Governments, to the 49th. of Henry the Third; None came to the Parliaments or great Councils of the Nation, where Life and Fortune were disposed of, but the King's immediate Tenants in Chief, by Knights Service.*

ib. p. 79.
& 228.

(3.) *That even they came at the Discretion of the King and his Council, ever after the 49th.*

ib. p. 210.
228. &
229.

(4.) *That the House of Commons began by Rebellion in that very year; nay, and the House of Lords too.*

ib. p. 227.
228. 229.

(5.) *That the Constitution of the Lord's House, consists at this very day, in the King's calling, or leaving out from special Summons to Parliament, such Earls and Barons as he pleases.*

p. 29.

p. 39.

(6.) *That by vertue of the New Law imposed upon the People, by the Conquerour, none within the Kingdom, were Free-men*

The Preface.

men or Legal men, but Forreigners, who came in with him, being such as nam'd and chose Juries, and serv'd on Juries themselves, both in the County and Hundred Courts, who were all Tenants in Military Service.

None surely, but such as read without observing any thing, whose Books can't beat into their dull Brains, common Reason, and who never were acquainted with that excellent Comentator's practise, will think that I need set my self to argue against every one of these: 'Till be enough, if under those Heads which I go upon to destroy his ill laid Foundations, I prove them upon him, for most of them confute themselves.

Truly, I cannot but think Mr. Petyt, and my self, to have gone upon very good Grounds; since, they who oppose them, are forc'd to substitute, in their Rooms, such pernicious ones, as would render the Foundation both of Lords and Commons, very tottering and unstable.

Not to mix Lords and Commons together, I will endeavour to do right to the dignity of that Noble Order, and their Interest in Parliament, apart from the other.

The Preface.

Ret. Parl.
3. H. 6.
n. 12. p.
228.

The Constitution of the House of Lords our Antagonist, as I shall shew, will not allow to have been settled, till after the time of E. 1. if it be yet: Whereas, for a short Answer to his new Conceit, the Earl of Norfolk, in the third of H. 6. lays his Claim to, and has allowed him the same Seat in Parliament, that Roger Bigod his Ancestor had in that great Court in the time of H. 3. And, though, on the side of the Earl of Warwick his Competitor, 'tis urged, that the Earl of Warwick had the Precedency by King H. 4. ~~the~~ Commandment. 'Tis answered, Yat Commandement yave no Title, ne chaungeth not the Enheritaunce of the Erle Mareschal; but if or unless hit hadde be done by Auctorite of Parlement. And, if Precedency were a settled Inheritance, which could not be alter'd, but by Act of Parliament, how can a fixt Right of coming to Parliament, be taken away otherwise? Though our Author supposes it to be at the meer Will and Pleasure of the King.

I take leave to observe, that the Right of Precedency from within the Reign of H. 3. nay, though before the 49th. is no way inconsistent with the Belief, that many Lords who had Right, till a Settlement then made

The Preface.

made, were left out afterwards, at the King's Pleasure, that is, had no special Summons; yet they could not be denied their Right of being there in Representation.

Be it that the Heirs of Bigod, and himself, were Tenants in chief, which, as I thought at least, I shew'd formerly, could not, since the 49th. have Right to come to Parliament; quatenus, Tenants in chief; Jan. Angl. facies nova p. 257. & 262.

yet, when any of the Heirs came upon particular Summons to Parliament, that is, the King's Calling them out, as Singular Persons, they were to come as Tenants in Capite, in the manner as they be bounden, and have been of old time accustomed. And they that refused, should be amerced as is the Penalty.

6 R. 2. cap. 4. All Singular Persons and Commonalties which shall from henceforth have the Summons of Parliament. &c.

By Manner is meant, (1.) in the same Quality, Lords as Lords; and (2.) in that Degree of the same Quality, which of old time had been accustomed.

(3.) The Manner also implies the manner of enjoying any Power in Parliament. Thus the Lords were of old accustomed to enjoy the ordinary Power, in a Manner properly Judicial; and that the supreme Manner too. Whereas the Commons had

The Preface.

of that, only what was needful to maintain their Priviledges; as to the Legislature, the Manner was the same, Neither was above, or could give Law to the other.

But in the judicial Power in Parliament, the Commoners were no more to be joyned with the Lords, than with the Tenants in Chief in the King's ordinary Court out of it: since the same Curia Regis, delegated from the Lords, and answering to that which was pro more, us'd to exercise that Power, both in Parliament and out of it; so that wherever they sate, they were in the same Court: The Commons could not exercise this Power with them out of Parliament, therefore not in it.

Some will say, that no more is intended by this Statute, than that every one who receives Summons, must come, as was his Duty and had been of old.

Whereas 'tis certain, they who did not come as they were bound, were amerceable before at the Common Law: nor was it likely, that the King wanted a Law to make good that Prerogative, which to be sure he had over his Tenants by their very Tenures, and could seize upon their Lands for Contempt of his lawful Power, as the Bishops were sometimes threatned, Inde se capiet ad Baronias su. s. And

Vid. infra
in the bo-
dy of the
Book. p.
177.

Walsingham fo:
1, & 2. Rot. Parl.
1, Ed: 2. & 1, Ed: 3.

Vid. 4.
Inst.

The Preface.

And this is enough against this Author, since he makes the King's Tenants in Capite, to have been all that came to Parliament, even by Representation, till the 8th. of Hen. 6. which 'tis his settled Design to prove, though sometimes he contradicts himself, and yields, that their Tenants by Knights Service came too.

Against
Mr. Petyt
P. 42.

Besides, the genuine Import of the Manner, leads me to this sense, especially, as 'tis joyned with Bounden: For he who was a Commoner till the Summons, was not bound to come as a Lord; nay, was not a Lord when he came; As appears by the Writs to the Lords Assistants, in the same Form with those which the Lords have. So that the Statute; in my sense, is manifestly in Affirmance of the Common Law.

I shall lay at the Feet of the Lords my Sentiments, in relation to their House, either as I agree with, or oppose one, to whom that High Order, probably will not think themselves much obliged.

I shake Hands with him, and agree, that King Hen. 3. a little before his Death, began to leave out such Earls and Barons as he pleased; but I believe not this upon his Ground, which is, as if it were
meerly

Against
Petyt. p.
228.

The Preface.

p. 229.

*James
Rep. f. 103.
concern-
the Earl-
dom of
Oxford.
Princes
Case
8. Rep-*

meerly from Royal Authority, that is, the Prerogative which that King had from of Old, without the Actual Consent of the People: For I say, 'twas given him by Parliament, either in the 48th. or 49th. Nor doth Rex statuit in the least discourage me in this Opinion, being many Acts of Parliament have pass'd with the joint Authority of King, Lords and Commons; and yet the Enacting Part has had words of the same Import with this.

p. 228.
supra.

p. 227.

(2.) I differ from my Opponent, when he would have it believed, that Ed. 1. and his Successors observed this constantly; or as he exprest the same thing before, The Practice was then and ever since accordingly.

And in this, he has dealt as unfairly by Mr. Camden, whom he quotes, as I doubt not, but 'twill be found, he has done by Mr. Petyt and me: For Mr. Camden tells us, That he has this out of an Author sufficiently Ancient, and thinks not, that he differs from the Authority which he receives, when he says, 'Twas thus only, done, till there was a settled Right. And this he makes 11 R. 2. but this the Doctor vouchsafes not to take notice of.

But

The Preface.

But how cheap does he make his applauded Reasonings, when he would prove it to be thus, ever to this very time, or the time, of publishing his Libel, because it was in the Reigns of Henry 3. Ed. 1. and his Successors, to the time of that Old Authors Writing; who, if we credit Mr. Camden, wrote before 11 Richard 2. of which he might be assured, by the way of Writing in several Kings Reigns respectively, to which Antiquaries are no Strangers; or else by the Date annex'd in the same Hand.

But to prove that the Learned Clarenceux knew more of these things than this Pretender, I shall shew, that Rights were settled for coming to the House of Lords long since. But he will say, possibly, That he has anticipated and evaded my Proof, as my Arguments upon the grand Question were in his Belief, by saying in one place, In those times, probably, the King might omit to summon whom he would.

I think he swarms with Contradictions, as a Judgment upon his Undertaking: For he says, That by what he calls the New Government, 'twas appointed and ordained, not only, that the Kings should call

Against
Mr. Petyt.
P. 175.
Against
Jan. &c.
P. 47.
Against
Mr. Petyt.
P. 227.

ib. p. 110.

The Preface.

call whom they pleased: Which cannot properly be meant of Calling but once by Patent, or Writ, and the giving a Right from thenceforth to come afterwards; because there was and is yet a new Call to every Lord for every distinct Parliament.

p. 227.

But he is expresse, That all those Earls and Barons of the Kingdom of England to which the King thought fit to direct Writs of Summons, should come to his Parliament, and no others, unless by chance.

But pray, what a Reflection is this upon several excellent Monarchs Successors to H. 3. whom he renders Denyers of their own Acts, though under the Broad Seal?

3 H. 6.
p. 12.

But there is an Argument in the Parliament Rolls, upon the Question of Precedency above-mentioned, where 'tis taken for granted, that our Kings and Queens had not then such a Prerogative to do wrong.

If soch commandementz shold make right, and yeve title, it wer to hard, for yen shold it seme yat neither of my sayd Lords, Erls, Mareschal and Warwyck, shold fro this day never sitte in Parlement without new Commandement.

The Preface.

To tell the Lords, who are concern'd
in this, that there are many who have an
indefeazable Right by Patent, and some,
the first of whose Ancestors or themselves,
never had any more than the ordinary
Writs, without creating Clauses, or any
other than such as when any Parliament
was to be called, went out of Course, and
Right, to them who were Lords before,
would be as needless as the Orators Dis-
course of Tacticks to the Carthaginian
Hero.

I shall be bold to offer to Consideration,
wherein consists the Right of such a Sum-
mons; and I take it to be in the Prescrip-
tion, though perhaps, none were settled in
the Right of coming, till the 11th. of
R. 2. Yet the time from whence they pre-
scribe might be Earlier; and yet, whether
Writ alone, or only as fortified with Pre-
scription, gave the Right, here was what
was not still left to Royal Pleasure on-
ly.

I conceive, that a Writ of special Sum-
mons, of it's self, gave no man Right to
come always after this as a Lord; for, if
it made him not a Lord, it gave him no
Right to come to the Lords House as such.
And this I take to be evident, from the
Re-

The Preface.

Jan. Augl.
at the lat-
ter end.

Records of the several Summons of the im-
Furnival's, Father and Son, who had the
same Writs of Summons with the Lords
and yet were no Lords; for, the lower
Degree of Lords, was Barons, and the
Son pleads, that his Amerciament in a
great a Sum as a Baron was against Law
for that he neither held by Barony, ne
Baro fuit intitulus, nor was called Ba-
ron, nor obtained that name; which could
not have been, if he was one of the Barons
in Parliament: so that he could be no more
than an Assistant, as the Assistants have
Writs in the same form with the Lords
Wherefore, if any claim'd from Writ, it
must be by prescribing to have had it for
long time in his Ancestors, as amounts to
a Prescription by the Custom of Parliam-
ent, which is the Law of it. Besides, it
can be no Objection, that to a Prescription
'tis necessary, that it should have been im-
memorially, so as nothing to the contrary
can be shewn; whereas the very first Writ
may be seen, for this most plainly is differ-
ent from common Prescriptions, both in
the manner of it, and in the Reason of the
thing.

(I.) In the manner. We find the Bur-
gesses of St. Albans to lay their Prescription

The Preface.

only from the time of the Progenitors of
the E. 1. which might be only from within the
time of King John, or from the beginning
of his Reign; if but from the later end,
there were an hundred years for a Prescrip-
tion.

(2.) But besides, this apparently dif-
fers in the Reason of the thing; so that it
must needs have a different Law from com-
mon Prescriptions: For other things, the
Ground of the Right, is the always having
enjoyed either by a man's Ancestors, or by
them whose Estate he has.

And if it were at any time in others,
and it could not appear when they parted
with it, 'twas a manifest Injustice for them
to make such a Claim to have it; so that
the appearing upon Record, when the first
Writ was, is an Argument, that a Pre-
scription may lawfully be made in this
Sense.

(2) There were Commonalties, Bodies
contracted by Representation, that came to
Parliament of Right, who yet were Lords
in the Drs. Sense, being they held in Capi-
te, as he supposes the Knights for the Coun-
ties to be Grantz, the same with Magna-
tes, as they held in Capite. I am persua-
ded, in this he taught the most Learned,
what

vid. Addit.
43 e 44

Rot. Parl.
8 E. 2.

The Preface.

what fell not within their Knowledge or Belief before, and for a while, made them quit that peice of Philosophy, Nil admirari, in wondring at the Sagacity of the man. However, by this time 'tis wond'rous plain from his Demonstrations; that admit a Difference was made between Lords and Commons, with distinct Power, yet the Commons of Counties, Citties, and Burroughs, were not only often called by the same Names, but were strictly Lords; and therefore had a joynt Power even in Judicature. For if they came before as Tenants in Capite, and that Tenure made them noble, 'twas to be ever in

Yet I take it, that such Tenants in Capite, had no share in the Judicature, because then 'twould have continued still.

6 R. 2.
c. 4.

the same manner since; But the very Traders, nobilitated by the Dr. lay claim to it and have allowed them a Right from Prescription.

It may be objected from hence against my Notion of the Lords, which held in Capite being pass'd by at the King's Pleasure (tho others were not) that here a Prescription, is laid upon the Tenure in Capite. And it being from before the 49th. of Hen. 3. there could have been no such Settlement as both my Opposite and myself receive. He perhaps has set aside this

The Preface.

in his own Opinion, but I must confess, I can't embrace his new Sense.

However, I think it no hard matter to give a natural Answer: For, the Author cited by the faithful Mr. Camden, acquaints us with no other Alteration, than what related purely to Singular Persons ex tanta multitudine Baronum, Who being scarce to be numbred, made very great Disturbances, which required a new Model, and a Restriction of the Numbers; provided it might be with a just preservation of the Rights of every one in particular: but, those great Bodies which before came by Representation, could admit of no change without a tendency to Destruction.

Agreeably to this Observation, the Inhabitants of St. Albans plead their Right to be represented in Parliament: not barely because of Tenure in Capite, but, Sicut cæteri Burghenses regni, as other Burgresses in like Circumstances.

(3.) I hope I have some Reason for my Confidence, when I affirm, that I ought not to differ from this New Light, when it instructs us, that the King's appointing and ordaining, That all those Earls and Barons of the Kingdom of England, to which he thought fit to direct Writs of

Mat. Par.
Quasi sub
numero non
cadebat.

Rot. Parl.
8 Ed. 2.

p. 227.

The Preface.

Summons, should come to his Parliament, and no others; *or, as he repeats the same, meaning, the Arbitrary Practice of Henry the Third. Ed. the First and his Successors, constantly was the Constitution of the House of Lords. Having recited the words of Camden's Author, he goes on.*

Against
Mr. Petyt.
p. 228.

Having had one great Antiquary's Opinion, joyned with matter of Fact, upon the Constitution of the House of Lords, let us see the Opinion of another, concerning the Origin of the House of Commons; *so that the Constitution of the House of Lords, answers to, or is in the same Sense with Origin in Relation to the Commons: And, the making this to have been the Constitution of the House of Lords, and maintained in Practice ever since, is as much as to say, the Rights of that Order of men, are not settled at this day; for the despotic Power in this matter, has been, if we believe him, constantly exercised, and the Right of Right, ever since the 49th. of Henry the Third.*

By the Constitution of the House of Lords, that which is the only thing possible to be here implied by the word, is the Right

The Preface.

of the Lords to come as Lords, and the beginning, or first Establishment of it. For, the Constitution of an House, separate from the Commons, could not consist in the King's leaving out, or calling Lords at his Pleasure: since such Arbitrary Procedure with them, would only differ them in point of Interest from the Commons, whom he pretends not to have been omitted at the King's Pleasure, ever since the 49th. of Henry the Third: but, he denies, in effect, that any Lord, and by Consequence, even enough to make an House or distinct Assembly of Lords in Parliament, had, or yet have, any Right.

Thus against the Laws of Friendship, he destroys the Successors of those Tenants in Capite, whom he so dearly lov'd, and cherish'd.

And it seems, courted a great Asserter of the Rights of that High Order, with a fawning Epistle, that he might the more easily betray them all with a Kiss of the hand, *vid. his*

Letter to
the Earl of
Shaftsbury.

Your Lorships
Most humble and
obedient Servant,

into a Belief, that he could give all due Satisfaction.

The Preface.

In the Charge which I have drawn up, I have intended no Injury: if the Consequences will not hold, 'tis from the Error of my Judgment, not of my Will.

For my self, admit what I am impeach'd of by him to be true, yet, being I argue, that ever since the 48th. or 49th. of Hen. 3. no man had Right to come, but as at this day: If my Notion of what the Government was before, be false, 'twill do no harm; and, I hope it cannot be affirmed, with any Justice, that I am a new Government Maker, in relation to the present Frame; yet, I know that it has been whisper'd about, as if I would have this Government to be new modell'd, which I utterly abhor, and that more than my Accusers; the Ground of whose Accusations have been chiefly my devoting myself to the Service of the admirable Constitution by King, Lords, and Commons, the Rights of the two last, I have, according to my Capacity, defended, being they have been controverted. But, surely no man dares be so presumptuous, to set himself against God's Vicegerent, by Divine Appointment, put over us, and that to our great Happiness in all matters or Causes. There are several Interests in our mis-
serab

The Preface.

serably divided Nation, and wise men may be of each Party; yet, if any such should wish ill to our gracious Monarch, or to Monarchy it self, both his Wisdom and his Honesty, were justly questionable. What Alteration of Property, the great Basis of a Nations Strength and Peace, would be upon a new Model, when Ambition an over-weening Opinion of a man's self, Covetousness, nay, and Prodigality too, would make many strive to be uppermost, while they brought their poor Country under the greatest Slavery?

For my part, I shall not scruple to deliver my self with the greatest Openness and Plainness of Heart.

The King is justly the Supream Head and Governour, in all Causes Ecclesiastical, as well as Civil; Long may he enjoy this his undoubted Right.

*Serus in cælum redeat, dinque
Lætus intersit populo precanti,
Neve se nostris vitiis iniquum*

Hor. Ode 2.

Ocior Aura

Tollat. —————

Long may he live, and long in Peace command,

The Preface.

Monarch of Hearts, as of his native
Land.

Long be it e're the Angels nigh his
Throne,

By mounting up with him, leave us
alone.

His Prerogative, no man or body of men, can take from him, which his excellently devised Negative to all Petitions and Counsels, secures. And this makes it, that the Sanction of all Laws is from the King only: for what a man does by the Advice of Counsel, he does by himself; as much as a man acts freely in those very things, in which there is the special Assistance of Grace, and Conduct of Providence.

For fear I should not be clear enough in my Expressions, though my Heart be clear in it, I will make the learned Bishop Sanderson speak for me.

He says, according to my real Sentiments, Cum dicimus penes unum Regem esse jus condendarum legum, non id ita intelligendum, quasi vellemus quicquid Regi libuerit jubere id continuo legis vim obtinere, nam & populi consensum aliquem requiri mox ostendamus.

*Sanderson
de obligati-
one Consci-
entie, Præ-
lectio 7. p.
189.*

Quin

The Preface.

Quin hoc est quod volumus, quod scilicet Plebiscita, Senatus consulta, cæteræque Procerum, plebis, aliorumque quorumcunque rogationes, nisi regia insuper authoritate muniantur, non obligent subditos, nec habeant vim Legis; quibus tamen maturè, & ritè preparatis, simul ac Regis accesserit authoritas, legis nomen, formam, & authoritatem protinus accipiunt, incipiuntque statim ac promulgatæ fuerint subditos obligare. Cum igitur illa sola censenda sit cuiusque rei causa efficiens principalis, & sufficiens, quæ per se, & immediatè producit, & in materiam preparatam introducit eam formam, quæ illi rei dat nomen & esse, etsi ad productionem ipsius effectûs alia etiam concurrere oporteat, vel antecedere potius, ut prævias dispositiones quò materia ad recipiendam formam ab agente intentam aptior reddatur, omnino constat quocunque demum ea sint quæ ad legem rectè constituendam antecedenter requiruntur voluntatem tamen Principis (ex cuius unius arbitratu & iussione omnes legum rogationes aut statæ habeantur aut irritæ) esse solam & adequatam publicarum legum efficientem causam.

The Preface.

Besides this, I have, in Sincerity, subscribed to his Majesty's Power in Calling, Proroguing, and Dissolving of Parliaments: and, this were enough in relation to our present Controversie, being only of Parliamentary matters.

But in short, to offer at the Flower of all other Flowers of the Crown, the King can neither do nor suffer wrong: but, like God Almighty, dispenses his Blessings to the inferiour World, while he sits above, in an impeccable, impassible, immortal State. God is not the Author of Evil, nor can he suffer by the Iniquity of Mankind; And, whatsoever Act proceeds from the King's Ministers, or whatsoever Malice be in the Heart of any of his Subjects, the Law, that Angel, with a flaming Sword, defending his Throne, will not suffer it to affect him. Nay, if through Misunderstanding of the Law, it should happen, that a King go contrary to his own Justice, 'tis as if no such thing had been done.

Plowden's
Com.

So, if he having an Estate in Taile Alien, though from a common Person, it would work a Discontinuance; yet, from him it has no Effect, because it would be a wrongful Action: Though he
has

The Preface.

has more Power than any Subject, yet Subjects may be, and are more able to do Mischief.

And, for a full Proof, what Confidence the Law has always had in the King's doing nothing in his own Person, but what is highly fitting, though an effect should follow upon a rigorous Action of his; as if he should kill an innocent man, with his own hand, there never was any Remedy. And this was taken for Law, as long since, as the Confessor's time. Nor is it to be imagined, that William the First, and his Successors, receded from this Power, how little soever they exerted it.

In that famous Case where the Confessor impeach'd Earl Godwin of Treason, 'tis urged by the great men of Godwin's Party, that he could not be a Traitor to the King, because he was never tied to him by Homage, Service, or Fealty. 'Tis answered, and not replied on the other side, That no Subject ought Bellum contra Regem in appellatione quâ de lege vadiare, could not lawfully demand the Battail against the King Appellant, Sed in toto se ponere in misericordia Regis, but must wholly yield him-

Tit. of
Honour
fo. 525.

The Preface.

himself to the King's Mercy. In this Case, though the Party might prove himself, against a Subject, to be innocent yet there was no way of Tryal against the King, the Appeal being the only Tryal and that required Battail: but a man ought rather to lose his Life, than strike his King, to whom he owes his Protection and Defence from Rapine, as the King is the great Executer and Preserver of the Laws.

Though this Case is of the King's appealing, yet if a Subject should presume to be Appellant against his King, for the Death of his nigh Relation, the Reason holds, and, surely 'twould be very absurd, for an Indictment to be brought in the King's Name, who has Jus gladii against himself; others could not execute the Judgment upon him: and, I take it no man can be compelled by Law, to be *felo de se*.

But, what need have I to say any thing on a Subject, which every man is bound by his Allegiance not to controvert?

I shall only observe, That the Dispute between us, can be no more than what Right one Subject, or body of Subjects has to impose upon another. Whether

The Preface.

no, the Kings of England, have always had a Council in matters of Legislature, we have no Difference; the only Question is, who were of the Council; but, if as 'tis argued on the other side, Tenants in Capite were the only Council; and, if I prove, that the House of Lords succeeded to the whole Power of such Tenants, and these can have no more than they had; he that makes the Tenants the only Council for the Legislature, takes away the King's Negative Voice: for that the Lords have, in that Jurisdiction, which they enjoy upon that old Right of the Tenants in Chief: and no King pretends to the Trouble of having a Negative in matters of ordinary Judicature.

But, besides this which I have answered, there is a Charge of being an Enemy to the Government by Law establish'd in the Church; for which, we must consider, that the Government, in this Respect, is made up of the Laws, and the Officers in it. For the Laws, I dispute none of them, because I acknowledge the Authority which made them: and, whether 'tis advisable, that any of them be altered, I leave to the Supream Wisdom of the Nation.

For

The Preface.

For the Officers, I quarrel not at the Chief, the Order of Bishops, nor yet at the Ecclesiastical Jurisdiction, upon the Reason already given; and, my Proof that they have this by Law, perhaps, is Particular: truly, I conceive it to be a great Mistake, that the Statute which took away the High Commission Court, took away all Ecclesiastical Jurisdiction; for, only the part relating to that Court, is repealed; and then the first of Elizabeth, having revived the 28th. of Hen. 8. the former Power, called Ordinary Power, is left entire, being provided for by the Statute of H. 8. Which, amongst other things, Enacts, That every Arch-bishop, and Bishop of this Realm, and of other the King's Dominions, may minister, use, and exercise, all, and every thing and things, pertaining to the Office or Order of an Arch-bishop, and Bishop, with all Tokens Insigns and Ceremonies thereunto lawfully belonging.

28 H. 8.
c. 16.

It may be said, That still I say nothing of the Divine Right of Church Officers, and Power; but, that I may Tr step as far as can reasonably be expected from a Lay-man, I acknowledge, that there is a Divine Right for Church Officers.

The Preface.

Officers, and Spiritual Power distinct
from the Civil.

I cannot now but hope, that I have said
enough to render me fit to be heard upon
my first Subject, in which, I have follow-
ed the Authority of the great Fortescue,
who taught the World long since, (nor is
this man of Letters, too good to learn of
him) that in all the times of these seve-
ral Nations and of their Kings, this
Realm was still ruled with the self-
same Customs that it is now govern'd
with all.

Fortescue

p. 38. 6.

As transla-

ted alrea-

dy.

Which, if Mr. Selden had taken in
the Genuine Sense, as meant of the Go-
vernment or Constitution, which is the
Foundation of all particular Laws, he
need not have been at so much Pains in his
Comment hereon.

If I find any thing more expected from
me, either in Vindication of my self, or
in more fully drawing my Adversary in
his proper Colours, and admirable Fea-
tures; the first I shall do for the sake of
Truth, and if I can get as much vacant
time from my Studies and Practice in
my Profession, as it seems he has had from
this, I may do the other, if it be only for
Diversión.

His Letter
to the
Earl of
Shaftsbury.

I am

The Preface.

I am sensible, that want of time, or of Health, to give the finishing Strokes to this rude Draught, are of themselves but poor Excuses to a Reader, who would doubtless be content to stay till he could see something more correct, but when my delay would give time for so much growing Mischief as has been sent abroad, to spread it self even such an Antidote as I now offer may be accepted, till Mr. Petyt has fully prepar'd his Catholicon, which will persuade them who have been imposed upon with Noise and Nonsense, to shew their Indignation at their own and their Teachers Credulity.

'Twould be Vanity in me, to run the Parallel between our Author's Magisterial Assertions and my Proofs; but he glories much in taking all from the Fountain head of Original Records, whilst I truly am thankful to those Friends that communicate to me Transcripts, so faithful, that even he himself cannot pick a Hole in any of them.

The Records of the Tower, and of the Exchequer, I gratefully acknowledge to have been received from the beneficial Industry of my ever honoured Friend Mr. Petyt; and the true Copies of
Dooms

The Preface.

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Dooms-day Book, are owing to the wor-
thy Knight, Sir John Trevor, and
to the learned Gentleman, Mr. Paul
Bowes, of the Temple, whose Father was
Executor to the indefatigable Antiquary,
Sir Simon D'Ewes.

And, surely no man need be ashamed of
such Assistances.

Thus, like the old Roman accus'd of
enriching himself by ill means, have I
brought before my Judges, the innocent In-
struments of my small Improvements. Is
there Witchcraft in any of these?

An

11A

(1)

♦ A
CONFUTATION
OF AN
IMPOTENT LIBEL

Against the Government, By

King, Lords, *and* Commons;

Under Pretence of Answering Mr. *Petty*, and the Author of *Jani Anglorum facies nova*.

Ne Sutor ultra crepidam.

The INTRODUCTION.

TIS, doubtless, a brave thing
to attempt heroick Mischief,
to insult over the Ruines
of a well framed Govern-
ment, at least, though but in Appear-
ance, to venture upon the Design of
B alter-

altering it, with Jesuitical Boldness, how much soever is wanting of their Subtilty. Fame is as careful to preserve the Memory of him that burnt, as of him, or them, that built *Diana's Temple*; nor is Mr. *Petyt* more likely to live in the *Records* of future Ages, for giving new Life and Lustre to so many of the past, than our *State-Physitian* for poysoning those sacred Fountains with his *Exotick* Drugs. 'Tis not to be doubted, but late Posterity will admire the excellent Composition of that *Clyster*, whereby he would purge the *Body Politick*, from the Chronical Disease of *Liberty*, and oppressing Load of *Property*.

Since he has thought fit to Out-Law all the *English*, and to give them *Lupina Capita*, put them out of all Protection and Security, he must not look for much Respect towards his voracious Cubs; which like the *Cadmean* Crue, were born fighting with one another: they would, like *Pharaoh's* lean Kine, devour the *Fat of the Land*, and must needs require a great deal of Nourishment, since they have so long been floating in his watry Brain, without any substantial Food.

(3)

Indeed, he himself, in great Measure, played the Executioner upon his own Follies, and condemned them for some time to the dark; being, as he says, in his Letter to a noble Peer, *Doubtful whether they should be published*, as is usually done by unlawful Births, he endeavoured to stifle them; but finding it not improbable, that they might with Justice be represented as dangerous and monstrous, he has let them live, to his Reproach.

CHAP. I.

That he mistakes the Question, and contradicts himself, to the yielding the whole Cause; nor, is a greater Friend to Parliaments, than to common Sense.

IF notwithstanding all this huffing Author's mighty Bustle, I evince,

1. That he mistakes the Question.
2. That he contradicts himself, and that sometimes to the yielding up his Cause.

p. 1.
Against
Mr. Petyt.

What will the World say of his *Knight Erranty*, in Antiquities, and noble Design to rescue the Virgin Truth from the enchanted Castle of *groundless and designing Interpretations*, for himself to deflour her.

I must be excused, if some of his Contradictions are suffered to fall in here, since I can hardly represent any Notion of his without them; but, I will keep all out from hence, which relate not to his Mistake of the Question.

SECT. I.

THE Controversie between us, is of *Right*, whether or no, the *Commons*, such as now are represented by *Knights*, *Citizens*, and *Burgessees*, had Right to come to Parliament, any way, before the 49. of *H. 3.* except, in the fancy'd way of being represented by such as they never chose, Tenants in *Capite*, by *Military Service*.

Mr. *Petyt*, in my Judgment, proves that *Citizens* and *Burgessees* had Right to come by *Representation*; and I, that *Proprietors of Land*, as such, had a *Right* to come in *Person*, before that.

The

The *Fact* is used by both of us, as a means to prove the *Right*: *Acts of Parliament*, as now called, and *King's Charters*, as of old, are also insisted upon; and even the *Records* and *Histories* produced to vouch the *Fact*, are, for the most part, yielded us; so that the Question upon positive Laws and upon Testimony, is, either whether *Right* can arise out of any *Fact*, or else, it is matter of *Right* and *Reason*; what Sense ought to be put on the Words of the Witnesses to the *Fact*, or any of them, as is made out by an ordinary Instance.

Suppose a Witness in a Cause, swears to a matter of *Fact*, and his Credit is not denied, but the *Question* is, in what *Sense* we ought to take his Words; here *Reason* must determine the *Fact*, by considering the Coherence of his Discourse, and the several Circumstances which explain it. And, this we are taught, by our doubtful Oracle, or rather, by *Apollo* himself, when 'tis told us, that the meaning of *fideles*, &c. is to be known from the subject matter; yet, for all this, forsooth, The Controversie is of matter of *Fact* only. Indeed, an Act of

His Gloss.
Against
Jan. Angl.
facies non a.
p. 1.

B 3 Parlia-

Parliament is *matter of Fact*, if 'tis disputed whether 'twas made or no ; but if we argue, that such or such is the Intendment of it, we shan't try this by a *Jury*, or any *Judge of Fact*.

And the *Right* which arises from thence, is from the *Meaning*, and the *Reason* of the *Statute*, as well as from the *Fact*, that it was made.

It will be said, Why do you stand upon Niceties? His meaning is no more than that he yields the *Right*, if you prove the *Fact*.

But, how can that be, when he denies a *Right*, even to his *Favourites*, the *Tenants in Capite*, though he supposes, that *de facto*, they came all along? Tho they came before the 49. of *Hen. 3.* Yet the *House of Lords* (and the whole *Great Council*, was before that, but an *House of Lords*) was a new *Constitution* in the 49th of *H. 3.* and had it's *Origine* from that King's *Authority*. And, after that, though *de facto*, *Lords* came as *Lords*, yet, ever since the 49. *H. 3.* it was not out of *Right*, for 'twas at the King's *Pleasure*; and so 'twas with contracted *Bodies of Tenants in Capite*, who prescribed to a *Right* from before the 49. and

Against
Mt. Petyt.
p. 228. &
229. p.
110. then
a new Go-
vernment.

and if they came were Lords (for you must know, no *Commons* then were ever at the *Council*) But the *King* and his *Privy-Council*, might give them a present *Right* if they pleased, or withhold from any the *Writ of Summons*, and deny their *Rights* in legal Practice, tho a *Parliament* was to be held.

In fine, the *Kings of England*, *de facto*, used to suffer *Tenants in Capite*, to come to their great *Councils*; but, the *Right* is deny'd even them who only had that *Permission*.

But, does he not own the *Fact* with us expressly, in the 48. of *H. 3.* and yet goeth to set aside the *Right*, by giving an *Account of the History*, and *Occasion* of it?

Against
Jan. &c.
p. 66. and
67.

Our *Champion* not only denies, that the *Commons* had any *Share or Votes*, &c. in making of *Laws* for the *Govern-ment of the Kingdom*, &c. unless they were represented by the *Tenants in Capite*; but, vouches the name of *Sir Henry Spelman*, to prove, that 'tis of *Right*, *Ex ipso jure feodali*, that the *Tenants in Capite*, should represent the rest. In this Case, he may admit us all the *Fact* of coming to the great *Councils*; and yet, the

Right would have been against us, as long as the *Fend* remained; that is, till the twelfth year of his present Majesty, when the *Fendal-Right*, as set forth by our *Opponent*, ceast. So that not only the *Fact* within the Compass of our dispute, would have been insignificant, but no *Fact* since, to this very day, could prove any *Right*, the *Right* of sitting in *Parliament*, having been, according to him, wholly *Fendal*, if any, no Statute giving a new *Right* to any elect, (as I shall shew) since the time when he places in the King's Tenants in Chief, by Knights Service, all that *Right* of Elections, which was suffered between Subject and Subject. Where then is the *Right* at this day, in any *Commoners* to come to *Parliament*? Nay, in any *Lords*, upon the Grounds which have already expos'd?

Vid. Pref.

But, what if in our Dispute about ancient Testimonies, we have granted us those very words which we contend for, as Evidences of the *Fact*; nay, and our own Sense too, to be on Record, admitting, that *Right* may arise from one *Fact* well proved.

Against Mr. Petyt. The Commons &c. were not introduced &c. before 44 H. 3. That is not once, if the Question be only of *Fact*.

ed, what Question then remains?
 Why then 'tis purely of Right, and that *Vid. infra*
 whether our *Debian Apollo* has not *fideles.* *p. 209*
 Right in his floating Island, to set up *e 210*
Matthew Paris above Record, if it were
 only for this Reason, that he speaks
 more oracularly and doubtfully than the
 Records.

Is it not granted, that the *Fact* is on
 our side, by such Authority as he would
 advance above Records, and that in re-
 lation to his belaboured Conquest, when
 he says, that the mistaken Notions, (that
 is, those which are contrary to his) of
 the Conqueror's Title, Laws, and Govern-
 ment, were devised by the Monks and Cler-
 gy-men-Lawyers.

Against
 Mr. Petyt.
 P. 43.

Nay, is not the Right of Conquest it-
 self, as merely such, made a Question
 by himself? For, he asks whether any
 man can forfeit, that is, justly loose his
 Lands to a Stranger, a Conqueror, that
 could not pretend Title, but by Violence and
 Conquest?

Justly to loose, and to forfeit, must
 here be reciprocal, to vest a Right in a
 Conqueror; for, if the Vanquish'd loose
 not their Right of Reprisal when 'tis in
 their Power, 'tis not forfeited, and, if
 'tis

'tis not forfeited *forisfacta*, made another by Right, 'tis not justly lost; nor 'tis not lost at all, only forcibly withheld.

Is it not in effect yielded us, that the Commons have ever, of Right, been *Assessors*, as well as *Petitioners*, and that from before the 49. of H. 3. For, he yields the Word *Ever*, to be in the Parliament Roll; nor does he tax the Clerk with any designing Addition to the Record; but, which serves not his Turn he says, 'twas ever since they were a third Estate, or a Member of Parliament.

Against
Mr. Petyt.
p. 134.

A goodly Discovery, that they were a Member ever since they were a Member; but, do they not plead, that they were ever a Member, that is, immemorially? If they had prescribed to this ever since the 49. of H. 3. he might have triumph'd; but, even in his Sense, neither *Fact* nor *Right* is controverted, because, for ought he says here, they might ever have been a third Estate. And, if *Burgesses*, whom, though *Tenants in Capite*, I shall take for *Commons*, (which, to be sure, with him had as great, if not greater *Right* than any not so holding) could not make that Claim

matter of *Right*, in the 8. of *E. 2.* but
 at least it might be overthrow for
 reason of State: how came it to pass,
 that the whole Body of *Commons* did it
 then, without Check from the *King*, or
 his *Council*, whom he makes very igno-
 rant of the *Prerogative*, or so fearful of
 seeming to assert it, that they durst not
 oppose it, though, perhaps, the *Lords*
 were all likely then to have joyned in
 throwing them out; and, this at a
 time, when we are told, the *Commons*
 were little, inconsiderable Fellows, and
 wore the *Lords* Livery Coats?

That more than *Tenants in Capite*,
 were present at the great *Council*, when
King John's Charter was made, I do not
 deny; and that he controverts; and indeed,
 how can he? There having been, that
 army which was too powerful for their
 unhappy *King*, and the *Londoners* in
 great Numbers, who, I take it, used
 to come more contracted; but, he denies
 that more than *Tenants in Capite* were
 Parties to the Laws; whether they were
de facto is to be proved by *Reason*. And
 he urgeth, that the Laws were made
 only to *Tenants in chief*, which indeed
 would be a Demonstration, that none
 but

but they were Parties, but, that were, I shall prove under a distinct head of his Contradictions.

S E C T. 2.

His Contradictions.

(2.) **M**R. Petyt, whom I cannot but call *judicious*, notwithstanding, the Interdict had asserted, that *Commons*, such as are now represented by *Knights, Citizens, and Burgeses* were always of *Right*, an essential part of the *great Council*. I joyn my Suffrage and for Proof, alledge that King *John's Charter*, does not constitute the *Tenants in Capite*, the only Members, but leaving to all the *Villa*, their *Liberties* and *Customs*. If the *Inhabitants*, even *Parishes*, came to the *great Council* without Consideration of this *Tenant in Capite*, their *Right* was sufficiently secured, under the word *Villa*.

Now, what if all this is oppos'd only out of a Spirit of *Contradiction*, and out of the same Spirit, he contradicts himself, and answers the *Character*, which the inimitable *Comley* gave of *Envy* — which

Well, but 'tis a *Town incorporated* and to strengthen his Argument, produces Writs of Summons to *Vills*, which, if he argues at all, is That he allows the free *Customs*, more than *Tenants in Capite*, to come to *Parliament*, to be hereby provided under the words which I insist on.

But, pray did *Littleton* explain himself, that none but *Towns incorporated* were *Vills*? Oh! but it must be *What Liberties? What free Customs?* common ordinary *Towns and Parishes* enjoy? *What municipal Laws? What private Laws and Priviledges?* Alas! If others have no *Laws* whereby they enjoy any *Lands*; for, the *Laws* were brought in by, and exacted upon only the *Peasants themselves*, who all held in *Capite* by *Knights Service* too; and could not have had so much as *private Customs*, or *By Laws*; neither had other *Incorporated Towns* any: for they are not within the *Charter of Liberties* which was to *Tenants in Capite*. What says *Fortescue* to all this? can he answer't, (when he makes the *Genus* to all *Divisions* under the *Hundred*? So that either a *Burgh*

Against
Jan. Anglorum &c.
p. 7.
If others
had Land,
they were
free from
the Feudal
Law.
Against
Mr. Petyt.
p. 43.

which begun,

David

very at the Praise her self had won.

the *Villa*, I say, signifies Towns and
 shes too, as distinct from the Bur-
 oughs; to be sure, not the Habitations
 of the *Peasants in Chief* only, whom our Op-
 inion argues to have been the only
 Representatives of the Commons, if they
 any, till the 49 of H. 3. But to de-
 my Notion of the *Villa*, he cites
 leton, to prove, either that every
 is the same with a Burrough, or else,
 taken as different from a Bur-
 ough, (and indeed here are *Burgi &*
) they must be small Towns incor-
 porated, not holding in Chief.

leton's Words, from which I have
 reason to dissent, are these, *Chescun*
est un Ville, mes nemy e converse. Against
 he translates, Every Burrough is a Jan. p. 7.
but not e converse. Now, if from
 he infers, that every Town is a Bur-
 ough, his Argument is thus, every Town
 Burrough, because every Town is not
 Burrough. A man of the weakest parts
 tell us, a thing is so because it is;
 he is a wise man indeed, that can
 it to be so, because it is not so.

Well,

incorporated Town, other Town, and a
 parish, or Village, may be a *Vill mes ne-*
 to *e converse*. But is it possible, that
 1, Fortescue can gain Credit, when such an
 om's author says the contrary? However,
 o con's hear him, for methinks the man
 ived looks as if he had some weight in him.

on. Hundreds are divided into Villages, Fortescue
 lain under which Appellation, are contained de laudibus
 incorp Burroughs: and by Burroughs must be Legum An-
 ft be meant such as held in Capite, Towns in- gl. p. 52. b.
 corporated, without such Tenure, or not
 rished incorporated, or else there were no Divi-
 Whens within an Hundred: And, to be
 as! The an ordinary Village is a Village, here
 enj Burrough is made the Genus to all
 e burroughs, but not to Villages, but as he
 the laws wherein a Village consists, it whol-
 in proves to my mind.

d of For the bounds of Villages are not con-
 s placed within the Circuit of Walls, Build- p. 52. b.
 r haws, or Streets; but within the Compass
 for Fields, great Authorities, certain Ham-
 Libes, and many other, as of Waters, Woods,
 site of Wast-grounds, which it is not needful
 is? set forth by their Names.

make Here, not any one of the Particu-
 nder, seem necessary to be added to the
 Burrough, unless all must; but, even a cer-
 tain

tain Compass of Fields or of Woods, may
make a *Village*, without any great Au-
thorities; and, within that space, might
be certain free Customs, which the Owners
enjoy; nay, though not inhabited.
And, for an Evidence of our Author's
great Love to Truth, he observes not
what is said in the Comment upon the
very words, which he cites out of *Li-*
tleton, Villa ex pluribus mansionibus vi-
mata, & collecta ex pluribus vicis.
And, if a Town be decayed, so as no ho-
uses remain, yet it is a Town in Law.

But what need I resort to foreign
Proof, when in effect this is granted
my hand.

'Against
Jan. &c.
p. 61.
ib. p. 63.

For, King John's Charter and King
Henry the Third's were the very same.

King Henry the Third's, was but Edward
the First's; and Ed. I. in the
of his Reign rather explained or enlarged
that Charter of King John, than con-
firmed the Charter of H. 3.

Well, to be sure nothing of Sub-
stance was left out; So that the Right
of coming to *Parliament*, (which indeed
could not be omitted out of the Char-
ter of all the then *Liberties* and Rights
of the Subject) were included in the
Char

Charter of *Ed. 1.* Wherefore, in those times, and in *Henry the Third's*, if the Charter were in his time made and confirmed, with that *Omission* of the *Tenants* in *Chief*, as not *material*, the *Rights* of all were comprehended under the *Liberties* and *Free-Customs* of the *Civitates*, *Portus*, *Burgi*, & *Villæ*, being from the *9. H. 3.* (by the *25. Ed. 1.* to be sure) the *Villæ*, the *Inhabitants* holding *Free-lands* in any *Village* or *Parish*, came by *Representation*.

So that in the Charter of *King John*, *Villæ* must signifie *inferiour Towns* or *Parishes*, as well as in the *25. of Ed. the First*.

But, 'tis an absurd Supposal, that by *p. 64.* the *25. of E. 1.* the *Constitution* was not settled, even though himself says, that the *House of Lords* was constituted before, and that a *new Government* was not only framed, but set up. Nay, I shall prove, ^{Against} *Mr. Petre*, that the *Representations* of the *Commons*, ^{pa.} were then settled: but to urge almost the same Argument from other words of his.

If *Hen. the Third's* Charter, according to *Matthew Paris*, on whom he ^{p. 52.} relies, in nothing differs from *King John's*

tain Compass of Fields or of Woods, may
make a Village, without any great Au-
thorities; and, within that space, might
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4. Inst. fol.

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Charter of *Ed. 1.* Wherefore, in those times, and in *Henry the Third's*, if the Charter were in his time made and confirmed, with that *Omission* of the *Tenants in Chief*, as not *material*, the *Rights* of all were comprehended under the *Liberties and Free-Customs* of the *Civitates, Portus, Burgi, & Villæ*, being from the *9. H. 3.* (by the *25. Ed. 1.* to be sure) the *Villæ*, the *Inhabitants* holding *Free-lands* in any *Village* or *Parish*, came by *Representation*.

So that in the Charter of *King John*, *Villæ* must signifie *inferiour Towns* or *Parishes*, as well as in the *25. of Ed. the First*.

But, 'tis an absurd Supposal, that by *p. 64.* the *25. of E. 1.* the *Constitution* was not settled, even though himself says, that the *House of Lords* was constituted before, and that a *new Government* was not only framed, but set up. Nay, I shall prove, ^{Against} *Mr. Petyt* _{*pa.*} that the *Representations* of the *Commons*, were then settled: but to urge almost the same Argument from other words of his.

If *Hen. the Third's* Charter, according to *Matthew Paris*, on whom he *p. 52.* relies, in nothing differs from *King John's*

C

As I have seen in several Manuscripts of great Antiquity, (affirming that they were some 2. and some 9. H. 3.) and which the Charter inrolled, 28 Ed. 1. proves beyond Dispute.

John's, and yet in that of Henry the Third, the Clause relating to the Tenants in *Capite* is left out. Is it not Demonstration to him, that the Rights of small Towns and Parishes were preserved by the general Words I insist upon? And that

according to the Sense of the Charter 15 Ed. 1. when the *Commons* were not obliged to be represented by Tenants in *Capite* only, (he himself contends for no more than the *Fact*, that sometimes more of the *Knights* for the *Counties*, were such as held in *Capite*, by Knights Service.

But why was not Henry the Third's Confirmation of King John's Charter, as much the Charter, or Grant of H. 3. as Ed. the First's Confirmation made it his Charter? So that here is another *Contradiction*. if he insist upon it, that it was not as properly the Charter of Hen. 3. as Ed. 1.

And in Truth, Henry the Third's was most properly his, since he granted it not as a Confirmation of King John's Charter, but as the *Liberties* which were in England, in the time of his Grandfather, Hen. 2. For, although the King says,

says, *Omnes illas libertates juravimus*, which, I take it, referred to the Confirmation 20; yet one of his Counsellors insists upon it in the King's name, that they were extorted by Force from King John: (for his Charter they required, or what was therein contained) Upon this *Habito Concilio*, mature Advice being taken, and that of the great Council, for that at least consented in not opposing, the King sent his Precepts to the Sheriffs throughout the Kingdom, to cause an Inquest of twelve Knights, or else, of twelve lawful men, that is *Free-holders* to be return'd, out of every County respectively, concerning the *Liberties* which were in England, in the time of King Henry, that King's Grand-father.

Ma. Paris
205. f. d.
Henr. i. Quo
juravit li-
bertates in
Angl. tem-
pore Regis
Henric.
205. f. d.

12 Milites,
vel legatos
homines.

The Charter mentioned by our Adversary, was 9. H. 3. And, so after this Tryal, the Precept for which, was, indeed, the actual Confirmation of what they found, or Judgment upon it, was not till two years after: but, then the *Clerus & Populus cum Magnatibus*: where, by the way, the *Populus* could not be the *Magnates*; the *Inferiour Clergy* and *Laity*, with the

M. Par.
Supra
p. 305.

great ones, go on upon their former Issue, and would give no Supply to the King's Wants, till he would grant *Petitas Libertates*, the Liberties they had before sued for, or demanded: not barely as a *Confirmation* of King John's Charter; but, indeed these very Liberties which they pleaded to have been such in the time of H. 2. The Denial of which, occasioned the fighting for them against King John, were, in Substance, no way different from the Grant made by King John, in Affirmance of the *Common Law*. And, so the Charter of H. 3. was *in nullo dissimilis*, to King John's; and, if there were any Difference, the *Clause* by which the great Priviledge of *Tenants in Capite* is argued for, *being omitted*, 'tis a Sign, that admit it constituted them a *full Parliament*, this was not their *Right* in the time of H. 2. nor return'd so to have been, but was the only thing extorted by *Force*, and fell with it.

This were enough to set aside all his *Arguments*, nay, and that *Language* too, which serves instead of them: but, I cannot deny my Reader and my self, the Pleasure of observing him more particu-

icularly, and if it may be, of know-
ing him, *intus & incute*.

His two main *Designs* (if he be steady
to any, but to *contradict* right or wrong)
are,

(1.) To prove that *William the First*
took away from the *English*, their *Estates*;
and as he imposed the *Tenures* and *Man-
ner* of holding our *Estates* in every respect,
so he did all the *Customs*, incident to those
Estates. The *Customs*, I thought, had
been within the *Manner*, but let that
go; the *Manner* implies the *Quality* (as
he might have been taught long since
by *Des Cartes*) this extended to all the
Estates derived or come to any now;
and, yet in the very same page, 'tis but
most of them being *feudal*, not all. I have
already shew'd his Denyal of the *Con-
queror's* Right to take any: and, thus
this *Mountain* is finely brought to Bed
by the Dr.

Des Cart.
Principia
Phil. p. 17.
Per modos
planè idem
intelligi-
mus, quod
alibi per
attributa,
vel quali-
tates, &c.

(2.) (As a Consequent upon *William's*
dividing the Land amongst his Follow-
ers,) he would shew that this King's
Grantees, and that in *Capite* by *Knights*
Service, were the only *Members* of the
Great Councils; and that no others had
any *Communication* in *State Affairs*, unless

Against
Mr. Puyt.
p. 2.

they

Against
Jan. &c.
p. 12.

they were represented by the Tenants in Capite : In another place, No doubt but the Tenants in Capite, were the General Council of the Nation. If therefore, he own that there were Councils more general than such as were compos'd of Tenants in Capite only, does he not yield the Cause? Not to repeat his Concession for Towns incorporate not holding in Capite, he yields it for single Persons who still held not by that Tenure.

As p. 112.

Against
Mr. Peryt.
p. 131.

In many places he grants, That all the Nobility of England met to treat with the King, (or to the like purpose.) Farther, that the Baronage or Nobility, included the Tenants in Capite, and such great men as held of them by Military Tenure ; So that in effect, if the Tenure or as he expresses himself, A Tenement or Possession, neither added to, or detracted from the Person of any, if free or bound, according to his Blood or Extraction. An ordinary Free-holder, in free or common Socage, might as well have been provided for, as to a Right in coming to Parliament, as a Tenant by Knights Service, of the King's Tenants in Chief. But, he tells us, then there must be great men, holding by the

Glos. p. 10.

Service

Services. But to shew that he insists not upon this, finding a vast number of men at the passing of *King John's Charter*, which was, *Inter Regem & liberos homines totius regni*, he yields, that the *Reti-* Glof. p. 26.
que and Tenants in Military Service, were *Members of the Council*: though, upon second Thoughts, he tells me, these *liberi homines* were the same which the King calls, in his Charter, *Liberi homines nostri*. These *Liberi homines nostri*, were *Tenants in Capite*.

Against
 Jan. &c.
 P. 9.

So that the *Tenants of Tenants in Capite*, were *Tenants in Capite*; and this, I suppose, explains that Passage, where he says, *Whoever held of the Tenants in Capite by mean Tenure in Military Service, held of those Barons or Tenants in Capite by the same or like Tenure that themselves held of the King*.

Against
 Mr. Petyt,
 P. 176.

That is every *Tenant by Knight's Service*, of the *King's Tenant by Knight's Service* held in *Knight's Service* (which is a tautologous Proposition, I heartily thank him for) or else, every such *Tenant of the King's Tenant in Capite*, held of the *King in Capite*, that is *immediately*, and *not immediately*, in the same respect.

Against
Mr. Petyt.
D. 113.

But, these *Tenants of Subjects*, such as were *Members of the great Council* were, however, concluded by the *Acts of their Lords*, *They that held of the Tenants in Capite by Knights Service*, were bound by their *Acts*, viz. The *Acts of the Tenants in Capite*; that is, These *Tenants* were *Members of the great Council*, and no *Members*, as their *Lords*, represented them, and yet did not represent them but they came themselves.

Jurati fra-
tres-franch-
pledges.

Glos. p. 31.

But, to be sure, none but *Tenants by Knights Service*, who were *Homagers* and sworn to obey their *Lords*, as the ordinary *Free-holders* were, to keep the *Laws* and defend the *Monarchy*, and the *Peace of the Kingdom*, were, in his *Sense*, bound by the *Acts of their Lords*. So that there was a necessity for the *Bull and Multitude of Free-men or small Freeholders*, to be bound with *Sureties* to their good *Behaviour*, in such manner as the *Law* had requir'd amongst themselves; otherwise, the *Government* could not secure it self against their *Violations of the Laws*; they neither meeting in the *Great Councils*, nor being bound by the *Acts of such as met*, any more than the *Tenants in ancient Demeasn*, when they

they have not been called to great Councils.

This Author is pleased to say, It cannot be thought that the King ever wrote to

p. 99.

all the Knights and Feudataries

of England, to meet in a great

Council, &c. and therefore, what-

soever the words of the Writ are,

the Design of it was to convene

such only, as had usually in those

times been called to great Councils, which

were the Tenants in Capite, though no Ba-

rons.

That is, in effect, the King never

wrote to all the Knights and Feudata-

ries, yet he did; for he conven'd his

Tenants in Chief, though no Barons.

'Tis manifest, he speaks here only of

the King's Feudal Tenants, for he avoids

the largest and most comprehensive Sense of

Fideles, which, (as he informs us there,

and in his painful and partial Glossary

of some half a score words) may be ta-

ken for Subjects in general, and restrains

it to such as were Tenants in Capite.

But, he says, 'tis not to be thought,

that all the Fideles, in the restrained

Sense, had the King's Letters or Writs;

yet, in the same page, with an antick

Face,

Pat. 15. Jo. p. 2. M. 2.

n. 9. Rex Baronibus mi-

litibus & omnibus fidei-

bus totius Anglie. These

Fideles were the Kings

Tenants in Capite.

Glos. p. 16.

p. 99. Face, he tells us, *they, the Tenants in Capite, though no Barons, were all summoned by particular Writs.*

p. 100. And this he learnedly proves by the *irrefragable Authority of King John's Charter, which gives the Tenants in Capite that were no Barons, a general Summon only, even as he himself translates the words.*

I'll appeal to *all but him*, whether he does not only yield the Right which he opposes in the Sense which he puts upon *Fideles*, but gives more than any reasonable man will insist upon; for I know not that it has been urged for more than *Free-holders.*

Glof. But whereas he tells us, That the word *Fideles*, of which there has been so late mention, sometimes is taken for *Subjects in general*; in another place, he gives us to understand, that the meaning of this word *Fideles*, as also of the words *Liberi homines liberè tenentes &c.* is to be known from the Subject-matter where they are used.

p. 17.

Wherefore, if such Grants were made by these, as *Feudataries* only could not charge, then others were Parties, though not in his large Sense. That such there were

ere, we have the Authority of Bracton, as has been before observed, though the Dr. thought it not worth his notice.

*Jani Angl.
facies nova.
p. 1.*

Sunt quedam Communes prestationes que Servitia non dicuntur, nec de consuetudine veniunt, nisi cum necessitas interverit, vel cum Rex venerit, sicut sunt hidagia, corragia, carnagia, & alia plura de necessitate & consensu communi totius regni introducta.

*Bract. lib.
2. c. 16.
p. 37.*

“ Which are not called Services, nor come from Custom, but are only in case of Necessity, or when the King meets his People, as Hidage, Corrage and Carvage, and many other things brought in by Necessity, and by the common Consent of the whole Kingdom.

And the Carvage, which is one of the things mentioned by Bracton, we find granted by the Magnates & fideles; *Can-
cesserunt nobis sui gratia communiter omnes
magnates & fideles totius regni nostri do-
mum nobis faciendum scilicet de qualibet ca-
ducata &c. duos solidos.*

*Rot. claus.
4. H. 3.
m. 2.*

But farther, if I may be so bold, he tells us, by this Law, meaning King John's Charter, the way and manner of summoning to great Councils was settled; So that

p. 100.

p. 161.

that for the future, the Summons should be by particular Writs to every great Baron and in general, to all Tenants in Capite by Writs directed to the King's Sheriff and Bayliffs.

Yet for all this plentiful Concession that here was a *Right* settled by Law, he had before, as much as in him lay, overthrown it, and destroyed the whole *Foundation of Parliaments*, by a will Answer to the Record of 8. Ed. 2. when St. Albans, as holding the Chief, pleaded it's ancient Right to come to the great Councils; and alledges, that the names of it's Representatives, appear in the Rolls of Chancery. The Answer *per Consilium*, is,

Scrutentur rotuli &c. de Cancellariâ, temporibus Progenitorum Regis Burgenſes prædicti solebant venire vel non, & tunc fiat justitia vocatis evocandis si necesse fuerit.

This I find thus translated.

Against
Mr. Petyt.
p. 78.

“ Let the Rolls of Chancery be search'd
“ if in the time of the King's Progeni-
“ tors, the Burgesses aforesaid used to
“ come, or not, and then let them have
“ Justice in this matter; and such as
“ have been called, may be called if there
be necessity.

Though

Though I am informed by such as *Against*
 cannot but know it to be so, that this might- *Jan. 8c.*
 man of Letters, has been drudging at *P. XII.*
 records these sixteen years; yet I do not
 the least, wonder at his Ignorance in
 em, since he laid not a Foundation at
 school, by learning Latin, as he should
 ve done; nor has Stepdame Nature
 dued him with Sense to understand

(1.) Can he pretend to Latin, and
 et translate *Vocatis evocandis*, such as
 ve been called may be called? The
 st Rudiments would have taught him,
 at it signifies, *They being called that*
ought to be called, or such Persons and
 ings as ought, Parties, Papers, and
 records.

And if he had look'd into the Parlia-
 ment Rolls of that very Year, he would *Rot. Parl.*
 ve found *Vocati vocandis*, or *Vocatis* *8 Ed. 2.*
si fuerint evocandi, (which was used, *n. 261.*
247.
 it were, to prevent all possible Blun-
 ders) the usual form of directing Try-
 als. Sometimes 'twas, *Vocatis partibus* *8 Ed. 2.*
auditis eorum rationibus. *n. 105.*

(2.) But, can he pretend to Sense,
 no shall think, that when Justice is to
 be done, still 'tis left to Will and Plea-
 sure,

sure, with a *may* be? Or, that when *Right* is grounded upon any particular *Reason* or *Fact*, which only is questioned, the *Right* would be in Question though this very thing were proved. How comes the Search to be directed as the only means of deciding it?

Oh! but 'tis *si necesse fuerit*. I take this can be no more, than that if after the *Rolls* were search'd, farther Tryal or the hearing the *Parties*, *Reasons*, and Enforcements of the *Fact*, were necessary, they should be called.

To which Sense, *Records* of the former year, give full Authority.

Rot. Parl.
8. Ed. 2.
n. 204. fo
n. 241.

Mandetur Thef. & Bar. de Schaccar quod vocatis coram eis Collectoribus inquisita contentis in petitione si necesse fuerit plenius veritate, faciant inde conquerentibus justitiam.

Rot. Parl.
8 Ed. 2.
n. 210.

But more direct.
Et si necesse fuerit quod Nicholaus de la Benche, & Hugo D'aule junior, vocentur tum vocentur & audiantur ibidem.

Against
Mr. Petyt.
p. 79.

But to Partiality, hence 'tis clear, that King and his Council were equally Judges when it was necessary to call them, and for them to come, as they were of their Rights and Pretences to come.

The King being sole and absolute Judge of the Necessity of calling *Parliaments*, he makes the Calling such as would prove their *Right* according to Law, to come as often as his Majesty shall please to call a Parliament, to be as much at the Disposal of the King, as what is his undoubted *Prerogative*, or else he denies the King's *Prerogative*, to call *Parliaments* at his Pleasure, if he do not contend that he may leave out those who had, with him, the greatest Right, Tenants in *Capite*, from the *Parliamentary Summons*. And this being prescribed to, from before the 49. of Hen. 3. between which time, and the 6. of King John, there was no Alteration in the *Way* or *Right* of coming to Parliament. How can he free himself from contradicting that *Way* and *Manner*, which he says, was settled then? If to evade it, he say, Though 'tis a Right according to the common Rules of Law, yet 'tis supersedable by *Prerogative*. I suppose my *Superiours* will give me an Answer, if upon this Account it will be no Contradiction; however, we have enough to make us laugh while, at other Particulars.

And

And thus has our Author, like another *Don Quixot*, encountring the *Winds*, been miserably maul'd with his own *Whymfies*, returning too quick upon him; nor can *Sancho Pancho* his Squire, afford him any great Assistance by curing some *literal Mistakes*, which are but outward *Scratches*, while the inward *Bruises* remain.

The Book-
seller to
the Rea-
der.

CHAP. II.

Of the Reputed Conquest.

SECT. I.

HIS *Notions* of the *Conquest*, whether more *absurd* or *false*, I cannot say fall now under Consideration; but a good man! fearing least that might be too far improved, he says, *this doth not directly reach the Controversie between us*

Against
Mr. Petyt.
p. 43.

Indeed, if it were only about the *Members* of the great *Council* before that time, (for he takes in all the time before, as far back as Mr. *Petyt*, whom he laughs at for it) I will grant that the

we

were not to the purpose. But what account can be given, why the *Folck-mote* held at one certain time in the year, when all the Bishops in the Kingdom, were to meet together, about the *great* Affairs of the *Kingdom*, with *all* that had any *Property*; such as were to find *Arms*, according to their *real* or *personal* *Estate*, should, of a sudden, without a *Conquest*, be turn'd into an *Assembly* of the *King's Tenants*, upon the *old* legal *Title*, I cannot comprehend.

If *William the First* divided all the lands of the whole Kingdom, then 'tis not probable, that others than they who derived from under him, should have had any *share* in the *Government*.

But if he did not thus act like a *Conquerour*, how is it to be imagined, that the old *Socagers* had nothing to do in the *Great Councils*?

Nay, upon another account, this is needful to be considered; for, as a *Conquerour*, we are told, he made *all the* p. 39. *free-men* of his *Kingdom*, *Tenants* in *Military Service*: But if he was no *Conquerour* in this Sense insisted on, then there must be a vast number of *Proprietors*, that could not be any way bound,

D

but

but by their own free Act or Consent, exprefs or naturally implied, in yielding to be represented.

S E C T. 2.

That he is so far from proving the Title of William the first, by Conquest, that he makes him an Usurper all along, proved by the History of the Conquest, compared with what he says about the Titles of William 2. and Hen. 1.

I would fain ask a serious Question or two, about this same *Conquest*.

Had not *William* many Sharers in his Victories? And can Mr. Dr. with all his Art, and the Help of the Tutelary of a certain Profession *Madam Cellier*, discover at the Birth, which came from *Conquering*, which from *Vanquish'd* Ancestors?

I'll take it for granted, *King William* conquer'd not all alone, *Sampson* himself could not have done it, even with his wonder-working *Jaw-bone*.

But pray Mr. Dr. spare me another civil Question; Do not you your self make an *Usurper* of your mighty *Conquerors*?

querour, who swallowed all the Land of the Nation, or devoured it between him and his *Myrmidons*?

You, in effect, yield that his Title p. 35. was by *Election*, by reason of the *Factions amongst the Saxon and Danish Nobility and People, the Pope's Encouragement, and siding with William, and the Inclineness of the Clergy to his Cause.*

You might have added, that before his Entrance, many *Normans* were settled here, in Power and Property.

It being thus, *William* the Second, who you say, had a Title by *his own* p. 51. *Sword*, and was chiefly assisted by the *English*, and *Henry* the First, who *cajold* p. 54. *the great men and the Army*, had the same kind of Title with your *mighty one*. Nor is there weight in the Objection, that there was so small time between the Death of one, and crowning another King, that it was not possible for the Cler- p. 60. *gy, or all the People of England or any that represented the People of England to be at the Consecrations and Coronations.* Because whoever has had the Crown set on his Head by them that could meet upon the Occasion, unless there had been a very powerful Interest or *Faction* against him,

has generally been owned for *King*, and had a tacit universal Consent.

Besides, all the Nation was not present, when *William the first* was crowned, any more than they were, when he gain'd the Victory over *Harold*; and therefore, if these two Coronations are set aside as *factious*, so may the other, and so it must be. For,

Against
Mr. Petyt.
P. 51.

An Election is or ought to be, a free, solemn, deliberate, sober, sedate, and the Lord knows what Act of the whole People, (where they have a Right,) whereby, the major part of them do choose this or that Person, or Thing, for such or such Ends and Purposes, and not an undermining, crafty, cheating and forcible Act of a Party or Faction, for the setting up this or that Person, or using this or that means, for the obtaining their own Designs and Purposes. Let him, I say, consider, and make a difference between these two Acts of the whole People and a Faction, and he may easily make a true Judgment of all the pretended Elections of our English Usurpers, and all other Traitors whatever.

Against
Mr. Petyt.
P. 35.

How easily may this Rule be applied to the first *William*, whose Success was facilitated by the *Factions* among the Sa-

son and Danish Nobility and People, as
 our Opponent confesses; besides, the *Fa-*
ction raised by the *Pope* for him, and by
 his own Country-men, who were here
 before, and could not but be very bu-
 sic for him: if he acquir'd the Crown by
Election, these things shew it to have
 been as *factious*, as those which are con-
 demned. But we must have Recourse
 to the History, to know how he became
 King here.

England, since it had been reduced to
 a Monarchy by the Conduct and Magna-
 nimity of the great King *Alfred*, found
 that benefit of being under *One Head*,
 that before *Succession* was settled, when
 a King dyed, the *People* voluntarily
 pitch'd upon some *One*, to whom they
 might pay their *Allegiance*, and from
 whom they might expect *Protection*,
 when a *King* quitted his mortal Domi-
 nion, to be Assessor with the Principa-
 lities and Powers in the highest Orb.
 The Question was not whether they
 should have a King or no; but who
 should be the man.

The *Confessor* through some foolish
 Vow, which was void in it's self, having
 denied Marriage-rights to his *Queen*,

they had none of his Issue to set their Hopes upon, and perhaps they were loth to fall again before a Family which they had formerly disobliged, and therefore would not think upon *Edgar Etheling*, who was Heir to him that wore the Crown next before the *Confessor*. But, that *Monarch* of their Choice, and as 'twas believ'd, the *Elect* of Heaven, was in such esteem with them, that the greatest Worth, and the clearest Stream of Royal Blood, would have signified little in respect of the Deference they paid to his *sanctified* Judgment; and therefore his Recommendation in such a *superstitious* Age, was to them a kind of *Divine Revelation*.

Abrev. Chron. Rad. de dicto. fo. 479. Subregulus Haroldus Godwini, filius quem Rex, ante suum decessum elegerat, à tunc Angliæ Primalibus ad regale culmen electus.

The *Norman Prince*, *William*, pretended a direct Gift of the *Crown* from him; but, there is Authority which tells us, That upon his *Nomination*, the *chief* men of all *England*, chose *Harold*.

Whether this illustrious Son of the great *Earl Godwin* was design'd by the *Confessor* or no, is left in Dispute; but that he arriv'd to his high Trust, by a *general Election* of those who were able

to

to keep under, or satisfy the rest, is certain, and yet an ancient Author calls him, *Conqueror*, *Heraldus Strenius Dux Conquestor Angliæ*.

*M. S. ex
bib. Domini
wild de-
functi.*

If *Harold* has made an absolute *Conquest*, which no man pretends, that I find, and *William* had conquer'd him, perhaps, there would have been a Devolution of a *Conquerours Right*, upon him who subdued *Harold*; but there was only a Competition between these two Princes, for that *Dignity* and *Authority* which *Election* had vested in *Harold*: 'Twas this that *William* fought for, not for the *Lives*, *Liberties*, and *Fortunes* of the *People*.

And *William* himself, upon his Death-bed, being ask'd to whom he would devise his Kingdom, makes Answer, that he would not pretend to dispose of it, and gives this Reason, which argues, that he thought he had no Right so to do. *Non enim tantum decus, hereditario jure possedi* For, I possess'd not this Honour as a Right of Inheritance, which, here must be meant, as what I had an absolute Property in, and Disposal of. *Sed diro inflictu & multâ effusione sanguinis humani perjuro Regi Haroldo abstuli,*

*Camb. Brit.
f. 104.*

li, & interfectis vel fugatis fautoribus ejus dominatui meo subegi.

“ But by a direful Conflict, and much
 “ effusion of humane Blood, I took it
 “ from perjur’d King *Harold*, and
 “ brought it under my Dominion,
 “ through the Deaths, or Flight of his
 “ Abettors.

With this agrees *Lex Noricorum*, in the Confirmation of St. *Edward's* Laws; *William the Bastard*, through God’s Permission, subduing *Harold*, *Regnum Anglorum victoriosè adeptus est*, Got the Kingdom of *England* by his Victory; but the Victory was over *Harold*, not the whole Kingdom. I wonder our *Antagonist* brought not this to prove that *William the Bastard* got all the Lands of the Kingdom, as he granted all the Lands of whole Counties, under the word *Comitatus*: but as ’twill appear, that the Proceedings of this *Prince* to his being crowned, prove his *Election*; so his Transactions with *Harold*, shew, that he laboured only to have that Power, which, he said, *Harold* maintain’d by *Perjury*.

Suppose therefore, *Harold* had not oppos'd, and without more Turmoils, *William* had been crown'd; had he in this Case been a *Conquerour*, in the Sense contended for? And what makes the Difference between his having it of *Harold* freely or by Force, in relation to the whole Kingdom? Surely, he would never have endeavoured to come in by Treaty, to a limited Dominion; when with those Advantages that were on his side, he might expect by turning out *Harold*, to jump into the absolute Disposal of the whole Land.

But, immediately after *St. Edward's* Death, he sent an Ambassador to demand a Resignation from *Harold*, to which he urged his Obligation by Oath; the Gift of his Kinsman the *Confessor*, was likewise pretended. But *Harold* argued for the Invalidity both of his own Oath, and the others Bequest, because they were, *absque generali Senatus & populi conventu & edicto*. That no Act of the *Common-Council* of the Kingdom: which *Council* is represented by this Author, under the Form of the *Roman Councils*, at those times, when besides the Senator's Votes, there was the

Selden's
Review of
the History of
Tithes.
P. 439.

the *Jussus populi*. And this is, in other words of the same Import, exprest by *Matthew Paris*, *Sine Baronagii sui Communi assensu*.

Upon *Harold's* denying the Norman demand, Appeal is made to the Pope and there was one then in the Papal See whose Ambition made him court all occasions of becoming the *Umpire* of the Affairs of *Christendom*; and this was the great Asserter of *Clerical Exemption* from the Civil Power, *Gregory the Seventh*.

Vid. Dr. Stillingfleet's Answer to Cressy's Apol. p. 347. ad 353.

The Pope, like God himself, who by his Prophets, often anointed and designed Kings, sends one of his *Minister Spirits*, (a *Nuncio*, I take it) with a consecrated Banner, as an Evidence of Right, and an Earnest of Victory, and encouraged him to fight the Lord's Battles, not expecting that commendable Ingratitude in the religious maintaining those ancient Rights of the Crown of *England*, for which he afterwards upbraided his Royal Son.

Whether *Superstition*, or the hopes of engaging the Pope's secular Influence and Interest to his side, occasion'd *William* to refer his Pretence of Right to the Pope's

Pope's Decision, I shall not judge; but with these Colours of a Title, he lands in England, and some say, committed no Acts of Hostility, till his Claim was again deny'd by the daring, but unhappy *Harold*: who was a man of Spirit, fit for Empire, and was likely to have kept it much longer, had not Fortune raised up against him, three great Enemies at once, his Brother *Tofto*, *Norwegian Harold*, and the aspiring *William*; against whom, possibly his arm was weakened with the Reflection upon his own Vow to *William*, to assist him in his ambitious Design; and what he ow'd him in Gratitude for his delivering him from the unmerciful *Norman Wido*, that had detain'd him in Prison. Yet, he would not follow the wholesome Advice of his Brother *Gurth*, who foretold, that Flight or Death, would be the Reward of his Perjury, while they, fighting for their

Country, might expect a better Fate. M. Par. f. 3.

Tir'd, and his Army scatter'd, with a bloody though successful Battel against his Brother, and the *Norwegian Harold*, breath-

Contigit ut Heraldus filius Godwini de Angliâ navigare vellet in Normanniam sed in terram que vocatur Pontium devenit, quem Wido Comes ejusdem patriæ cepit, & in Custodiâ tenuit donec industria Willielmi sapientissimi Comitæ Normannorum eum liberavit, &c. Brevis Relat. de Willielmo 1^o per Sil. Taylor.

M. West.
f. 223.

breathing nothing but Victory; upon News of the *Normans* coming, he hastens from *Stanford Bridge*, to *Sussex*, and nine Miles from *Hastings*, before he could put his Army into Array, and as some say, before half of it came up, he eagerly encounters the fortunate *Norman*, and there was his last Scene of Action. The *People* thought that he deserved to be their *King*, who though by Artifice, and a dissembled Flight, could conquer the great *Harold*.

Rad. de
dicet. fo.
480.
So Mat.
Par. f. 3.

Nec diutius verò ibi
immoratus, versus *Lun-*
doniam principalem ci-
vitatem *Angliæ* cepit
ire, & sic ipsam terram
Anglorum conquirere.
Brevis Relat. per S.
Taylor. fo. 193.

William, with great Wisdom, hastened to *London*, where, doubtless, he had many Friends of those *Normans*, that were in favour under the *Confessor*; besides those which they and the Slaves and Mercenaries to the *Roman* See, could wheedle to his side; and then the Feuds between the *Saxon* and *Danish Nobility and People*, made one Party for him, if it were only out of *Faction*, and opposition to the other. He well knew, if the *City* declared for him, he did his Business in great Measure, that being the Heart of the Nation, from whence the Life of Power diffuses it self.

Many

Many who had true *English Blood* in
 their Veins, and were against the Reign
 of a *Foreigner*, had been lab'ring an In-
 terest there, for the setting up *Edgar* Florentius
 wig. f. 634.
Etheling, the Nephew of *Edmund Iron-*
side, and lineal Heir to the Crown.

But there was so short a time from the
 Death of *Harold*, to *William's* sudden
 coming up to *London*, that they could
 not bring it to any Head; and there-
 fore, they that engaged in it, and the
 whole *City of London*, (Army enough
 to have drove *Duke William* to his
 Country, or his Grave, uncrown'd,)
 came out to meet him, as far as *Berk-*
amstead in *Hertfordshire*, where the for-
 tunate *Duke*, *Fedus pæpigit*, made a Sim. Du-
 nelmenfis.
 f. 195. sic
 Hoveden,
 f. 450.
 league, or entred into Terms with
 them, they giving Hostages, for the
 performing the Oealty or Allegiance,
 which they promis'd him; but, like ge-
 nerous *Englishmen*, who were never
 good at Treaty, rely'd, at that time,
 upon his Word, for that reciprocal Fe-
 lity, which, if we believe *Sir Henry* Glof.
 p. 271.
 Jurabat a-
 liquando
 & Rex ip-
pelman, Kings used to swear to their
 subjects.

subditis suis fidelitatem mitto exteros; sic autem de Canuto Rege Flor.
Fig. in anno 1016. Fidelitatem illi juravere quibus & ille juravit quod
secundum Deum & secundum seculum fidelis esse vellet eis Dominus.

The

The Agreement, as *Florentius* acquaints us, was made with *Prince Edgar*, amongst others; and, admit that a Paction with the People were voidable sure he was bound by what he made with him, who, if any one, had the Title to the Crown.

He fought with *Harold*, on the 11th of Nov. and on *Christmas*, was crowned at *Westminster*, upon his own desire to come in like a *natural Prince*, either by Choice, or by *Succession*.

His Coronation Oath was taken before the Altar, which was supposed to add to the sacred Tye; and this was *coram clero & populo*. The Clergy and Laity without distinction by Honours were Parties, as well as Witnesses; and the form, as is agreed both by *Simeon of Durham*, *Florentius*, and *Hoveden* was, *Velle se sanctas Dei Ecclesias ac Regni vires illarum defendere, nec non & cum populo sibi subjectum justè ac regali providentiâ regere, rectam legem Statueri & tenere, Rapinas, injustaque judicia penitus interdicere.*

Sim. Du-
nelm. f.
195. Flor.
wig. f. 634.
Hoveden.
f. 450.
Rex dici-
tur à re-
gendo, Bra-
con.

“ That he would defend the holy
“ Churches of God and their Rectors
“ and likewise, rule all his Subjects with

“ Ju

Justice, and that Care which befits a King; that he would both *make*, and *himself keep* right Law, and wholly interdict Rapines and unjust Judgments.

Viz. According to Law.

Viz. Give his Assent.

The Solemnities which used to be performed by the Arch-bishop of *Canterbury*, fell to the care of the other Arch-bishop: some give the reason, because the Pope had declared *Stigand*, who was then in the See of *Canterbury*, a Schismatick, and that he was suspended from his Office, by Ecclesiastical Censure. But *Bromton* tells us, and puts it in the first place, that 'twas said by some, that *Stigand* refused to do it, because he look'd upon *William* as a bloody man, and an Usurper: And *William* of *Newberry* is positive in it, *Cumque peractâ Victoriâ tyranni notum exhorrescens & legitimi Principis personam inducere gestiens à Stigando tunc temporis Cantuariens. Archiepis. Episcopo, in Regem solemniter consecrari deposueret, ille viro, ut aiebat, cruento, & alieni juris invasi, manus imponere nullatenus adquevit.*

Bromton. f. 962.

Newbergenfis. p. 1.

So Bromton supra.

“ And, when after the Victory gain'd he being afraid of the name of Tyrant, and desirous to assume the Person of a lawful Prince, entreated to be solemn-

“ lemnly consecrated King by *Stigand*
 “ then Arch-bishop of *Canterbury*; *Sti-*
 “ *gand* would by no means, lay his
 “ hands upon a man, as he said, bloody,
 “ and an Invader of anothers Right, or
 “ that took what was none of his
 “ own.

I conceive it most probable, that this
 Prince, who according to his Character,
 could not easily forgive them that caus'd
 him any Trouble, being mindful of the
 Check which *Stigand* gave him, even
 after *London* had taken Terms, purpose-
 ly wav'd, taking the Crown from one
 that rival'd the Pope in Spiritual, and
 him in temporal Power, and had bid
 open defiance to both. Wherefore, his
 being crown'd by the other Arch-bi-
 shop, and the Jealousie he had of *Sti-*
gand, which made him take particular
 Care to have him with him into *Nor-*
mandy, lest his Authority in *England*,
 should unsettle his new got Kingdom,
 gives a strong Inducement to the Belief
 of what *William Thorne*, who wrote in
 the time of *Rich. 2.* tells us out of
Sprot and others; though some would
 have us think, that he took it only out
 of *Sprot*. He himself tells us, that even
 where

Et potissi-
mè Stigand,
Brom-
ton fo. 562.

Quia qui-
dam labora-
runt ut-
pote Tho.
Sprot &
alii &c.
Prologus
Willielmi
Thorne.
fo. 1758.

where he follows Sprot, he not only cut off many things, but added many remarkable Passages.

*Quedam
superflua &
compilatio-
ne dicti
Thomæ*

rescans, quedam notabilia suis in locis eidem addens. ibi

Thorne gives us a particular Account of Stigand's raising the men of Kent, to fight for their old Laws and Liberties, which many others, not being Kentish men, would not mention; lest their Magnanimity should upbraid the sudden yielding of the rest.

*Thorne. fol.
1785.*

This I take to have been between October and Christmas, when he was crowned; and, that having entred into Treaty, and concluded on Terms at London (which, however, they tell us that he broke) he went towards Dover, *Ut illam cum cæteris partibus comitatûs suæ subjiceret potestati.*

It seems, Dover was then the Strength of Kent, and he thought, by the getting of that, he should be able to keep all that Country under. Upon this, Arch-bishop Stigand, and Abbot Egel-sine, and all the great men of Kent, perceiving that an ill Fate lay upon the whole Kingdom; and that whereas before, none of the English were Ser-

E

vants,

‘ wants, now, Nobles as well as Plebeians,
 ‘ were brought under the Yoke of Sla-
 ‘ very, represented to the People assem-
 ‘ bled together, the misery of their
 ‘ Neighbours, the Insolence of the *Nor-*
 ‘ *mans*, and the hardship of a servile
 ‘ Condition, and animated them all, as
 ‘ one man, to a resolution of dying or
 ‘ maintaining their Liberties.

Sylas Tay-
lor of Ga-
vel. p. 167.

I know, many learned men look up-
 on this part, as suspicious, taking the
 Sense to be, that there were no Villains
 in *England*, in *Kent* especially, before
 that time, which they are at pains to
 shew that there were: But, I conceive
 the meaning of the words is no more,
 than that there had ever been in *Eng-*
land a Distinction between Free-men
 and Slaves; and therefore, that none of
 the *English*, (that is, the People of the
 Land, which the Law has ever confin'd
 to *Free-holders*, they that depend upon
 the Will of others, Villains or Servants
 being no *Cives*, any part of the Nation
 in that sense) ought to bear that Slave-
 ry, which the Violence of the *Normans*,
 threatned to all in common.

Nor wants there Authority for the
 Freedom of all the *Kentish*-men in the
 largest

largest Extent; for, in an ancient Roll
of the Customs of *Kent*, 'tis said to have Lambert's
' been allowed in *Eire*, before *John* of Perambulation of
' *Berwick*, and his Companions, the Ju- Kent.
' stices in *Eire* in *Kent*, the 21. of King 21 Ed. 1.
' *Edward*, the Son of *Henry*; that is to
' say, that all the Bodies of *Kentish men*
be free, as well as the other free-bodies of
' *England*. And this confess'd to be true, Lambert's
' 30. Ed. 1. in the Title of Villenage, Perambulation.
' 46 in *Fitzherbert*, where it is holden p. 632.
' sufficient, for a man to avoid the Sub-
' jection of *Bondage*, to say that his Fa-
' ther was born in the Shire of *Kent*.

' The just value of this Freedom, made Thorpe's
' all the *Free-holders* of *Kent*, with all
' that depended upon them, resolve to
' put a stop to *William's* Depredations.
' At *Swanscomb* was their general Ran-
' dezvous; and their numbers were so
' great, that as the *Norman Prince* ad-
' vanc'd, he found himself hem'd in with
' an armed Wood; for, that they might
' secure themselves of his making no Es-
' cape, so confident were they of Victo-
' ry, or forcing their own Terms) eve-
' ry man by Agreement, took a Bough in
' his hand, to block up the way.

‘ The Arch-bishop and the Abbot, in
 ‘ the name of the rest, told him, that the
 ‘ whole People of *Kent* were come out
 ‘ to meet him, and to acknowledge him
 ‘ their Leige Lord, if they might enjoy
 ‘ their Liberties and Laws; otherwise,
 ‘ they denounc’d War, and bid him
 ‘ Defiance.

‘ Upon this, *William* calls a Council
 ‘ of War, and he finds it expedient, to
 ‘ give them their Terms: they knowing
 ‘ how he had used those who trusted to
 ‘ his Generosity or Justice, took Hosta-
 ‘ ges, as well as gave, and then in full
 ‘ Assurance of his Performance, yielded
 ‘ him their County, or the Government
 ‘ of it, not all the Land and Property there,
 ‘ and, as what would secure the Government
 ‘ there to him, resigned up the Castle of
 ‘ *Dover*.

Perambu-
 lation of
Kent, p. 25.

To this Relation, the great and faith-
 ful Antiquary Mr. *Lambart* gives suffi-
 cient Reputation.

Camden's
Brit.
ut verè
quavis
minùs purè
in antiquo
libro sit
scriptum.

Mr. *Camden* says, that no man before
Sprot has told these Circumstances; but
 he cites an ancient Authority, which
 was a Plea, not oppos’d, and which
 could not be taken from *Sprot*, in which
 he confesses the Substance of this to be

con-

contained ; and though not elegantly writ, yet with Truth. So that Mr. *Camden* is on our side, being convinc'd by the truth of his own quotation. *Dicit Cantii Comitatus quod in Comitatu ipso de jure debet de ejusmodi gravamine esse liber, quia dicit quod Comitatus iste, ut residuum Angliæ, nunquam fuit conquestus, sed pace facta se reddidit Conquestoris dominatui, salvis sibi omnibus libertatibus & liberis consuetudinibus primò habitis & usitatis.*

“The County of *Kent* says, that in
 “that County, of right, it ought to be
 “free from such a Grievance, because
 “it sayes, that that County was never
 “conquered, like the rest of *England*.
 “But, having made a Peace, yielded its
 “self to the Conquerour's Dominion,
 “saving to themselves all their Liber-
 “ties, and free Customs, at first had,
 “and from that time us'd.

It seems, in standing up for their own Rights, they reflected upon the rest, as an humble conquer'd People.

And indeed, whereas it has past into a Maxim, *Nemo miser nisi comparatus*;

*No man's condition is unhappy thought,
But when into the Scales with happier men
(he's brought.*

On the other side, men are apt to think their Happiness incompleat, without comparing themselves with those, whom they look upon as deprived of the Advantages which they enjoy. Thus our late Author enhances the value he puts upon himself, by the Contempt which he thinks his Adversaries deserve, though, in truth, how low soever they lye, he rises no higher, but, it may be, disgraces his Maltership by the comparison.

Against
Mr. Petyt.
p. 39.

*Feudalibus
Legibus
non coarce-
tur. Spel.
Glos. tit.
Gavelkind*

But, to return to the Men of Kent, the generality of which, how free soever they were, were, by his Rule, no Freemen of the Kingdom : for, *all the Freemen of the Kingdom were Tenants in Military Service.* Which was, of the Feudal Law ; whereas their *Gavel-kind* was exempt from it.

I can imagine no other Reason why they, above others, constantly maintained their old Laws and Customes, than that they were a sturdy People, more than ordinary tenacious of their Rights, and

and sensible of the least Violation. And possibly, for a long time they retained the Power of taking Satisfaction upon some of his Favourites, who were Pledges for *William's* Performances. Sure I am (as far as my *Authors* can assure me, after this *Classick Writer* has blasted their Credit, I will not say with a contagious Breath) he promis'd as largely to the rest of the Nation, as he did to the People of *Kent*.

If the men of *Kent* had their Representatives at least, at the *Electing* him to Rule over them, and were not subjected to him as a *Conquerour*, nor were their Lands parcell'd out by him, though we are taught, *è Cathedra*, that he took away from the *English* their *Estates*, and gave them to his *Normans*. So that, according to his Reasoning, the *Flemings*, *Anjovins*, *Brittains*, *Poictorins*, and People of other Nations, who made up a great part of his Army, and came with him under considerable men, their Leaders, came out of stark love and kindness. They, though *Adventurers* with him, being content he should gratifie onely his *Normans*. Nay, he divided all the Lands of the Kingdom amongst his great

Against
Mr. Petyt.
p. 35.

Followers : even the Lands of those *Normans* who had Estates here before.

But, if, I say, the men of *Kent* enjoyed their Right, as above said, what Reason, beyond what I have assign'd, is there to think, that it was otherwise with the rest in general, some of which were Adventurers with him, but all equally sharers in the extent of his Promise, to maintain *rectam legem*?

Domesday
in Surrey,
Aethelred,
Godamaster
Heraldi
tenuit IRE.
In another
place there
called Sarot
Regis Ed-
wardi.

Though he and some of his Successors chose Succession, as the most honourable Title, yet, that he had none but *Election*, is evident, in that he was not Heir to the *Confessor*, but rather *Harold* was, who was Son to *Goda*, that King's Sister. Nor could the *Confessor* and *Harold* lawfully set the Crown upon his Head, without the Consent of the Kingdom: Nor yet could he gain a Title by *Conquest*, over those who yielded upon the Terms of enjoying their Laws and Liberties; and, who, unless those Terms had been granted, had both Right and Spirit too to have kept him from Reigning over them.

Abating the *factious* conspiring to set him up against *Edgar Eteling*, who, though

though he was not, as now the Law is, actual King before Coronation, yet ought to have been crowned, the People had sufficient inducement to chuse *William*.

1. Because he was a Prince of a less Potent Nation, and therefore would make an Accession to *England*, and give them footing upon the *Continent*, from whence they might spread the glory of those Arms, which were reproach'd with that necessity of Self-defence, which makes even Cowards Valiant.

2. He was a Prince who had governed his own Country with great Prudence and Moderation; nor would attempt upon that acquisition, to which many Circumstances invited him, without the *Consent of his Senate* there.

*Brevis Relatio
Willelmi ad
finem. Syl.
Taylor,
p. 189.*

3. *Harold* being dead, they knew not any man so likely to defend them from those Enemies which threatned and molested them from abroad, or that could better secure them from the Tyranny of many Masters at home, and the Distractions, which, in all probability, would arise from their Feuds and Competitions for the Crown; which, every
one

one that could draw the *Mobile* after him, would be catching at, till it was plac'd and settled.

Thus, I think, 'tis made evident, that *William* the first, his Title was by *Election*, and that the *Election*, according to the infallible Rule, was *factious*, since, how unanimous soever they might be at the crowning him, *Feuds* and *Factions* wearied them into the Agreement, more than the Force of his Arms ; but, I shall not give him this Author's obliging Epithetes. 'Twill be said, perhaps, if the *Election* be void, then he is let into a Title by *Conquest*, yet how can that be, when the very *Conquest*, or rather Acquisition, whatever it were, was by this means, he being *received upon Terms* ? Besides, if there were no *Election*, then the People never yielded, were never *conquered* ; And, there was no more a *Conquest* of the whole Nation, than an *Election* by the whole. The actual yielding of some, and tacit Concurrence of others, made his Title.

Fædus pigit.

S E C T. 3.

*That he makes a Title to the French King,
from the Acquisition of his Feudal Ten-
nant, the Norman Duke, upon his Noti-
on of the Feudal Law.*

BY the Law of Feuds, as he receives the Supposititious Sir Henry Spelman, (for so, out of Reverence to his Memory, I take leave to call the Second Part of the *Glossary*, till 'tis reconcil'd to Truth, or, till our Author, who goes upon the same grounds, makes them good) *Superior quisque Dominus Regulus agit in suos subditos, & in rebus ad feodum suum pertinentibus ex ipso jure feudali jus dicit.* 'Every Superiour Lord 'Acts like a little King over those that 'are under him, and, in things belong- 'ing to the Feud, gives Law, even by 'the very *Feudal Right*, that is to say, 'is absolute.

Against
Mr. Petyt
p. 104.

Little it
seems for
the num-
ber of his
Subjects,
not the
extent of
his Power
over them.

In another place, *Consentire quisque videtur in personâ Domini sui Capitalis pro- ut hodie per Procuratores Comitatus vel Burgi, quos in Parliamentis, Knights and Burgeses, appellamus.*

2 Glos. tit.
part.

• Eve-

‘ Every Inferiour seems to consent in
 ‘ the person of his Lord, as at this day
 ‘ we do by the Representatives of the
 ‘ County or Burrough, which we, in
 ‘ our Parliaments, call Knights and Bur-
 ‘ gesses. What, no Citizens amongst
 them?

Truly, I should think by the Com-
 parison, that a Legislative Power was
 delegated to the Lords of the Feud, as
 there is, it seems, to the Representa-
 tives of only the Counties and Bur-
 oughs; but that it is, *Ex ipso jure*
feodali.

Glo.
 P. 7

Further, our State-Quack has it, *As*
all their Estates arose from his Beneficence:
 What if some purchas'd theirs? So they
 depended on his Will.

That is the
 Feudal Ten-
 nants. ib.
 P. 4

Originally, all *Vassals* held their Lands
 at the Will of the Lord, and whether they
 were Delinquents or not, he might at his
 Pleasure take them from him.

When this rigid Law expir'd, he does
 not vouchsafe to inform us, however
 he yields the Substance of all, in ac-
 knowledging, that the superiour Lords
 gave Law, or were absolute, and re-
 presented or govern'd the Tenants in
 the Legislature, till the 49. H. 3.

To

To assume, *William* was *Feudal Tenant* to the King of *France*, and according to the *Feudal Law*, long after his time *King John* was summoned to the *French Court*, to answer for the Death of *Arthur* of *Britain*, who was another *Feudatory* to the *French King*. *William* himself, was not only subject to the *Feudal Law*, but thereby was as much under his Superiour Lords despotick Power, in relation to what he got, as the most inferiour Tenant: *William* depended upon that King's Will, his Dominion was forfeitable without any default, he was Leige-man to, and received Laws from the *French Monarch*.

Though the Crown of *England* has always been imperial, subject to none upon Earth, yet, he that wore it, unless he were so free, that he could go with his Land, whither he would, which to be sure, is inconsistent with this *Feudal Law*, he could not quit his Dependance.

*Potuit ire
cum terrâ
quæ voluit.*

SECT.

S E C T. 4.

The Notion of the Feudal Right considered, and the Right of Tenants in free and common Socage, to come in their own Persons, to the great Councils, shewn from thence.

BUT since the mention of *Jus feodale*, as advanc'd in the second part of the *Glos.* ascribed to Sir H. Spelman, occasions a little Consideration of the *Feudal Law*, I, out of a Zeal to clear his Reputation from the Charge of things, false or frivolous, and having, at present, no other Authority for his being the Author of it, than ones who has an excellent Faculty of *Storying*, except against what is there said to be *ex ipso jure feodali*, as none of his.

'Tis there taken for granted, to be the very *Right of Feuds*, deriv'd from the *Feudal Law*, that the Superiour Lord of the *Fend*, should give *Law, jus dicere*, to them that are under him; and 'tis evident, this is not meant of an ordinary Jurisdiction, because by virtue of this, 'tis fancy'd, that the Lords represent-

presented their Tenants in the Extraordinary at the *great Councils*; and by the same reason, the Assertion of a Judge censur'd in Parliament, is justifiable, viz. That *the King is the only Representative*. But I must observe, that this must be from

Either,

(1.) The general Law, which guides the *Fends* in all places where *Fendal Law* is received,

Or,

(2.) The particular *Fendal Law* of England.

I. Our Author evidently takes this in the first Sense: being to prove what was the *Fendal Law* here, he cites the *New Gloss* foreign *Fendists*, who acquaint us with P. 4. the Law of *Fends* amongst them; but this first Sense is not supposable, in that this Law, upon that account, would be as much the Law of Nations, as the Law for the Advantage of Embassadors wherever they come.

And this could not generally prevail, but from the Authority of *Catholick Reason* that should require it; but that I do not find, since the Lord may have the *Usile Dominium*, which the *Fendists* speak

speak of, as incident to *Feuds*, without the despotick Power ; and the end or nature of them being answer'd, from whence will the Argument be brought that it ought to be so ? I will grant, that it is not a *Feud*, unless there be *Utile Dominium*, for that distinguishes it from an *Alodium*, which sometimes may yield no profit to any Superiour. But those who well knew the Nature of *Feuds*, teach us, that 'twas the Infancy of *Feuds* when they wholly depended on the Lord, and could not stand without being supported by his pleasure, then indeed (which was before *Feuds* were spread into many Nations.) *Nec servientibus aliud jus erat in his prædiis quam precarium, quod qui habet non tam diu quam ipse vult, sed quamdiu is qui concedit patitur eo frui.*

Cragius de Feudis,
 fol. 20.

This indeed agrees with that Law, which is supposed to have obtained, even till the 49 H. 3.

Solet usus fructus constitui in personam tantum.
Cujacius de feudis,
 Tom. 4.
 fo. 464.

Whereas from hence *Feudal Tenure* advanc'd to an Estate for Life : and all this before the year 650, from which time, to *Charles the Great*, who began to reign in the Year 800, unless one were particularly assigned by the Gift, the

the Lands descended, by right of Inheritance, to all the Sons. *Craglus,*
fol. 21.

Its state of Maturity was, when it descended to one, but still there was an Inheritance by the Law of *Feuds*, before the time of *William the First*, and above 450 years before the 49th of H. 3.

And, I would rather believe *Cujacius* for the *Jus Feodale*, or the Nature of it, than what we find under the Title *Parliament* in the *Glossary*.

Cujacius defines a *Feud*, *Jus prædio alieno in perpetuum utendi fruendi, quod pro beneficio Dominus dat, eâ lege, ut qui accipit sibi fidem & militiæ munus, aliudve servitium exhibeat.* *Cujacius de*
feudis,
fo. 464.
Tom. 4. ‘An Usufructuary Right in another’s Land, which the Lord gives for a Benefice, upon condition that the Grantee should be faithful and true to him, and perform *Military or other Service*.

This is a perpetual Right, therefore not to be disposed of by the Lord’s Will, or the Law which he should give.

‘Tis indeed *Usufructuary*, because the Lord has the Forfeiture and Escheat, according to the Laws settled in any
F par-

particular place : For, I take it, that in one place they differ'd from another.

Choppinus
de Juri-
dic. An-
deg.

And, in Confutation of this Conjecture, that *ex ipso jure Feodali*, the Lord *jus dicit*, (take this as the general Law of Feuds) 'tis enough that in any place where the Feudal Law was received 'twas otherwise. Choppinus sayes, that amongst the French a Feud implies not *juridica potestas, nil commune cum juridica potestate*. Which, if (as Jurisdiction is often used, to signifie a Power inferior to *Jus dicere*) it is but a Judicial Power ; it follows, that the Lord could not have the greater, where he had not so much as the less. And farther, Feuds have, in all Countries, been guided by the Law of Property, their Common Law.

Thus sayes Cujacius, *Nos quoque jus feudorum quo Italia utitur sequimur non inviti, nisi siqua in re pugnet cum legibus aut moribus nostris*. ' We also willingly follow the Law of Feuds, ' which Italy uses, unless in any thing ' it fights with our Laws or Customes.

And this is to be observed, that the end of raising Feuds has often prevailed to introduce a Custome without any
express

expres Law, and beyond the Foreign Law of *Fends*.

(1.) Without expres Law, and thus to preserve the Head of a *Barony*, that was never to be divided; whereas, any other part was often so, in which the Common Law prevail'd from the end of raising the *Fend*, which requir'd the Preservation of that entire, though the other part of the *Barony* might be divided.

Bracton and *Fleta* suppose the *Barony* to descend to several, as well Males as Females. *Primogenitus vel primogenita* *Bracton.*
lib. 2. fo. 76.
habeat electionem propter suam Eigneciam, says *Bracton*, whose words only I repeat; Let the first born, Male or Female, have Election, by reason of the elder Share. *Fleta* lib. 5, fo. 313.

And with this agrees a Record in King *John's* Reign.

Thomas de Scoteney, petit versus Willielm. Scoteney Capitale Mesuag. quod habere debet in Steinton cum pertinentiis sicut illud quod pertinet ad Eigneciam suam de Baronia quæ fuit Lamberti Scoteney.

'*Thomas de Scoteney*, claims against *Term.*
Pasc. 7. &
8. *Johan-*
nis 9. dor-
'*William Scoteney*, the Capital Mesuage, *10.*
'which he ought to have in *Steinton*, *10.*

• with the Appurtenances, as that which
 • belongs to his elder share of the Baro-
 • ny, which was *Lambert Scoteny's*.

These surely were Brothers, not Sisters Sons, being of the same Name, and the Claim being immediately from the seizin of *Scoteny*: and this Claim was allowed, as the Record shews.

Hist. of
Gavelkind
 p. 104.

Besides, tho 'tis generally believed that *Wardship* was in use before the Reign of H. 3. And Mr. *Sylas Taylor*. in his History of *Gavelkind*, thinks he proves it to have been before the *supposed Conquest*.

Righton.
 fo. 2430.
 An. 1219.
 4 H. 3.

Yet, we have good Authority, that there was no express Law for this, before 4. H. 3. *Magnates Angliæ concesserunt Regi Henrico Wardas hæredum & terrarum suarum, quod fuit initium multorum malorum in Angliâ.*

• The great men of *England*, grant-
 • ed King *Henry* the Wardships of their
 • Heirs and Lands, which was the be-
 • ginning of many Evils in *England*.

(2.) We find Custom prevailing beyond what was the foreign *Feudal Law*, at least, of some places; for which, I may instance in Relief paid by the Heir male, after the Death of his Ancestors.

Where

Whereas, I find it in *Cujacius*, payable only by the Heir female, *Siquis sine filio* *Cujacius*
Masculo mortuus fuerit & reliquerit fili- fo. 498.
am, filia non habeat beneficium patris nisi
à domino redimerit.

‘ If any one dye without Heir male,
 ‘ and leaves a Daughter, let her not
 ‘ have her Fathers Benefice, unless she
 ‘ redeem it of the Lord.

That Relief was called Redemption,
 appears by the Law of H. 1. *Hæres non* Leges fo.
redimet terram suam sicut faciebat tempore 1. cap. 1.
fratris mei sed legitimâ & justâ relevatione
relevabit eam.

It seems, in King *Rufus* his time, this
 payment was so unreasonable, that ’twas
 a Redemption, in a strict sense, and a
 kind of Purchase of the Land ; but now
 ’twas to be a lawful and just Relief.

2. The *jus feudale*, mentioned in the
Glossary, if it be not the Law generally
 received where *Feuds* were, must be
 the Law of *England* in particular.

But ’tis to be observed, that *Choppi-*
mus knocks this down, who tells us,
 that amongst the *French*, *Juridica pote-*
stas, was not imply’d by a *Feud*. But
 our *Apollo* teacheth us, that our ancient
Tenures were from *Normandy*, and that
 F 3 was

Aganſt
 Petyt. p.
 31. in mar-
 gin.

was govern'd by the *French Feudal Law*, being of the *French King's Feud*. Wherefore, the *Juridica Potestas* or *jus dicere*, was not here, *Ex ipso jure feodali*; nay, in the same place, the *French Feudist* tells us, *Interdum certè Baro Castellinum observat superiorem*.

Chorpinus
de Juris-
dict. An-
deg. fo.
455.

'Tis certain, sometimes a Baron is
'under a *Castellan's Feud*.

And he gives the Reason why it may be so, which is, that a *Feud* carries not
ib. fo. 450. with it, the *Potestas juridica*, which reason is very apparent, in that a *Castellan* is of a degree lower than a *Baron*.

Leges H.
1. cap.

Take *Juridica potestas* in the same Sense with *jus dicere* in the Glossary, a *Baron* was to take Laws from his Inferiour, and to have his Lands taken from him without Forfeiture; as it appears by the Law of *Hen. 1.* that being one of the Judges in the County Court, was not upon the Account of Resistance, but the having *Free land* there; so it must have been in the great County Court of *Cheeshire*, though they had an extraordinary Power there. Admit therefore, that a Lord of another County were *Feudal Tenant* to a *Commoner* there, (as 'tis not to be doubted but he might have

have been) should this Lord have been represented by his Capital Lord there ? Or, admit a Lord there, had no Land, but what he held of a Commoner, as of such an one as *Thomas de Furnival*, who had several very considerable Mannors; might *Thomas de Furnival* represent the Lord in the Lord's House ?

Glos.
2 part.
Consentive
qui;q; vid.
Jani Angl.
facies no-
va. p.
Sed vide
the Record
more at
large.

But farther, taking the *Jus Feodale* to be as in force with us, unless the positive Law, giving so large a Power, be shewn, 'tis a begging the Question; for, 'tis to prove the *Right*, which our wise Antagonist would exclude from the Question, (as being indisputable, I suppose) by the *Fact*; whereas the fancied *Right* is used in his Hotch-potch *Glossary*, to induce us to the belief of the *Fact*. But from what Source is this *Right* deriv'd ?

S E C T. 5.

An Improvement of the Notion of Jus Feodale.

THat I may make our *mighty man* of Letters out of Love with his darling *Glossaries*, I'll all observe to him, That,

2 Part of
the Glos.
and his
own.

Against
Mr. Petyt.
p. 31.

That, according to that, for the Credit of which he pawns his own Truth, or his Friends, All the Lord's *Right* of Representing their Tenants in the *Great Councils*, is meerly Feudal *ex ipso jure feodali*. But all *Fends* were enjoy'd under *several Military Conditions*, or *Ser-vices*. Being then these were the onely *Feudal Tenures*, and yet, as appears by *Domesday-Book*, and all manner of Authority, there were *Freemen*, who held in *free*, or else in *common Socage* (though the Dr. sayes, all the *Freemen* of the Kingdom were *Tenants by Military Service*) These *Socagers* were not chargeable by any without their own consent; But, like men of another Government, (and, it seems, he will afford them nothing here) they, though called, were not obliged to come to the *Great Council*, which was the *Curia* of the King's *Feudal Tenants* onely; Nay, they were never at it: And therefore, no wonder if the *Laws* were observed by, and exacted upon, *onely the Normans themselves*.

Against
Mr. Petyt.
p. 43.

For the others could not be bound, and, if they, consented to any Charge for Defence of the Government, it could be

be onely in what way they pleased to consent, either in a Body by themselves, or united with the *Vassals*, or else severally at home, as a meer Benevolence. And there being *free and common Socage* Tenants before the *Norman's* Entrance, and since continually, thus it must alwayes have been.

CH A P. III.

That Domesday-Book, to which he appeals, manifestly destroyes the Foundation of his Pernicious Principles.

S E C T. I.

SInce our *Tenures*, and the manner of Against Mr. Petyt. P. 31. holding our *Estates*, in every respect, with the *Customes* incident to those *Estates*, are said to be brought in by the *Conquest*: and not onely most, but all free *Estates* must have been *feudal*; as *Knights Service*, which is made the onely *feudal*, was, in the time of *William the First*, the onely free *Service*. What ib. p. 39. I have said of *Feuds* in the last Chapter, doth

doth directly reach the Controversie between us ; though our Author, who has an excellent faculty of overthrowing his own Arguments, would have the Discourse about these, nay, and the Conquest it self, to be out of the Question, and then, pray, what is the Question? It cannot be whether *Tenants in Capite* represented, or, by their Votes, concluded all that held by any other Tenure ; Nay, whether these and their Tenants could do it, because this Tenure, and manner of holding Estates came in with the Conquerour.

I hope I shall not seem tedious, though I am long upon this *πρωτον ψευδος* of a Conquest, that Corner-stone, on which, (if he knows what he do's, which I cannot but doubt of sometimes) he Erects a fanciful Scheme of Government. And thus the lofty Fabrick rises one Story upon another.

Against
Mr. Petyt.
p. 35.
p. 176.

p. 35.

William, having made an actual Conquest, thereby had the absolute Disposal of all the Lands of the Kingdom : and did, according to his lawful Power, give all away to his Followers, who, though French, Flemmings, Anjovins, Britains, Poictovins, were all metamorphos'd

phos'd into Normans; upon whom onely p. 43.
the Feudal Law was executed and observ-
ed. The King's Grantees, though ordi-
narily a Tenement or Possession neither ad- Glof. p. 10.
ded to, or detracted from the Person of
any man, if free or bound, according to his
Blood or Extraction, might well be all the
Free-men of the Kingdom, because the
Conquest had made all the English Slaves;
and the King granted onely to his Great
Followers, which were Free before.
But, when these Grantees granted out
to others, the Subfeudataries made part p. 176.
of the Freemen of the Kingdom, as
holding by Knights Service; these were
the men, the onely Legal men, that named ib. p. 39.
and chose Juries, and served on Juries
themselves, both in the County and Hundred
Courts: in which Courts they were the
onely Suitors. Alas! no body else had
any free Lands in the Counties: There-
fore, these must have been the men that at
first Elected two Knights in every Coun-
ty, out of their own number, and onely
they were Electors, when first the Body of
them began to be represented.

And, unless others are impower'd by
the 8th of H. 6. c. 7. which restrains the
numerous Electors to Free-holders of
40 s. per ann.

As

Carta H. I.
Barones
Comitat.
qui liberas
habent ter-
ras.
p. 42.

As the *Tenants in Capite* came before the 49th in their own Persons, and represented the Body of the Commons of *England*; and *when first the Body of them*, that is, the *Tenants in Capite*, began to be represented, they onely, as was proper, chose their own Representatives, so it ought to be at this day. And thus the *Tenants in Capite*, that is, they alone, and yet they and their *Tenants by Knights Service*, have ever been, and still ought to be, the onely Members of the *Great Council*.

I know he will venture hard, but he will make all this good, in his next, if *he can*, (there being a narrow Interest in some, for which they would sacrifice the Publick,) But, I shall think our Government will have been finely brought to Bed by his *Midwifry*, when such a *monstrous* brat is own'd by it.

Vid. Letter to the Earl of S.

Against Mr. P.
P. 43.
ib. p. 179.

But, if King *William*, the *Master-builder*, refus'd what this Author would make the *Head of the Corner*; and was not so absolute a *Conquerour*, as to leave the *English* neither *Estates* nor *Fortunes*, what becomes of his *Airy Ambuscade*?

He

He has the Confidence to refer to *Dooms-day Book in every County*, for this Fiction, and that will satisfie a man wilfully blind, that *William the Conquerour* p. 175; *divided all the Land in England amongst his great Followers*. Now, what if I shew out of himself, and this book of Judgments concerning Lands and Services, that he divided very little of the Lands in *England*, to his *Followers*, to be sure that he was far from distributing all.

Our Author spared the particular Proof, I'll warrant it to make us believe it would require a Transcript of the whole Book: but I think I shall impose upon no body, by affirming, without transcribing the greatest part of it, that even where Lands were enjoyed by other Owners than such as held them in the time of King *Edward*, and upon other Titles; yet the Lands continued for the most part, to hold in the same *Manner* as before. Whereas, *William*, according to him, brought in a new *Manner*, and none were so much as Free-men, who held not by *Knights Service*, which he settled over all, *jure hereditario*; We generally shall find, that there was no change of the *Manner*
or

or *Quality* of the Service, but only of the Quantity, *Tunc geldavit, modo geldat*, for so much, either more or less, according to the Improvement, or Fall of the Land; and frequently, that which before paid for a certain number of Hides, paid nothing at the making of the Survey. The Rent, I conceive, was in proportion to the value of the Land, that being seldom named, but only, how many Hides, Acres, Roods, &c. there were; and these Tenants seem to have held in *free or common Socage*. Sometimes they were such as *potuerunt ire cum terrâ quo voluerunt*; which, I doubt not, were the *Alodiarîi*: sometimes they were not so free, but held by *Villain Services*, though themselves were free; and these were Tenants in *common Socage*. Sometimes *Milites* are named, but rarely; so that 'tis certain, he can have but small Assistance from *Dooms-day* book: and being there sometimes *descent*, sometimes *purchase*, and now and then the King's *Grant* is mentioned, who can tell by that, whether generally the Lands were enjoyed by the one or the other Title, since, especially, 'tis most usual, only to name the

Per.

Doomsday
Tres Taini
tenuerunt
& non po-
tuerunt ire
quolibet.
ut flet tenu-
is de Tosti
sed non fu-
it alodium.

Persons that held formerly, who did then, and by what Services. I take it, there are as many, and as often, *English* names there, as others, and though the greatest part are of names different from the former Owners, yet this is to be considered, that the Christian Names, in which Sons frequently differed from their Fathers, are more us'd there than Sir-names.

Vid. Camden's Remains of Sir names, from p.

But, I thank him, he has given me an easie Task, to shew, that in spite of his Conjecture, this great Survey demonstrates that there were *Proprietors of English-men*, who held *Free-lands*, upon Titles paramount to what he insists upon.

136. to p. 141.

If notwithstanding our Author's Quotation out of *Tilburienfis*, an Officer of the Exchequer, who was for bringing Grist to the Mill, I produce a List of *Free holders*, who

But they should not claim any thing from the time the Nation was conquer'd under the Title of Succession or Descent, *Tilburienfis*.

enjoyed their Lands of the Seizin of their *Ancestors*, their *own*, or theirs of whom they purchas'd, from before the counterfeit date of the *English Slavery* what shall we judge of his *Vagaries*, which he himself owns to be *impertinent*?

Against Mr. P. p. 34. Against Jan. &c. p. 1. p. 43. Not directly reach the Controversie.

I shall

I shall take no notice of Ecclesiastical or *Kentish* Titles, because, the Church and that County, may be thought to have been particularly exempted from the common Calamity ; ~~the same~~

~~the same~~ ; nor shall *Freeholders* of Houses have a place here.

I must observe, that though the same names are often repeated, Sir-names being then most in use, we cannot tell, but that they might have been different Parties ; but however, if there were so many distinct *Properties*, 'tis enough.

Surrey.

Domesday.
He was
not *Tai-*
nus Regis.

1. *Hugo de Port* was a very great *Proprietor*, as may be found under the Title, *Terra Hugonis de Port* : many *Mannors* he had ; and as appears in *Hampshire*, he had at least two *Mannors*, *Cerdeford* and *Eschetune*, from his *Ancestors*, before *William's* Entrance.

And even this is a ground to believe, he was a great man, that he had a Sir-name or Addition.

Where-

Whereas, if we believe the great Antiquary Mr. Camden, Surnames were not settled among the common People fully, till about the time of Edw. 2. Camdens Remains. P. 136.

2. Oswald holds Michelham.

Idem tenuit T. R. E.

3. Seman holds in Mideham.

4. Otbert holds an hide in Michelham, which his Ancestor had in Mortgage of Bridrick.

Antecessor ejus tenuit in Padio.

5. The Earl of Moreton, a very powerful Prince, as I may call him, held Estreham in Tenrige

Ipsa Comes tenuit Estreham T. R. E.

Hundred, in the time of King Edward.

He enjoyed several other great Possessions of the Gift of King William. I

doubt not indeed, but he was a Nor-

man born, yet he was here before the

Entrance of the Norman Duke, and

might, not improbably, be in Favour

with King Edward the Confessor, who

Camdens Remains. P. 136.

was all Frenchified. He, to be sure, had

some Lands within the Kingdom of

England, which he enjoy'd not from

P. 176.

William's Division.

6. Seman holds one Hide in Mideham.

Tenuit de Rege Ed. nunc tenet de W. Rege.

7. Godwin holds one Rood.

8 William the Hunter holds Littleton.

G

9. Oswald

9. *Oswald* holds *Pechingsford*.
10. *Seman* holds one Rood in *Copedome* Hundred.
11. *Oswald* holds *Fecebam*.
12. *Teodorick* the Goldsmith holds *Clevintune*.

Pater ejus tenuit de Rege E.

13. *Chetel* the Hunter holds *Lodesorde*.

Hampshire.

Terra Tainorum Regis.

Pater ejus tenuit in Alodium de Rege E.

Nota, In Cambridge-shire, of 37 Owners of Houses in the seventh Ward, but 3 were Francigine.

Pater eorum tenuit in Alodium.

Ipsemet tenuit in Alodium de Rege E.

1. *Alwi* the Son of *Saul* holds *Tederley*.
2. *Uluric* holds *Lockerlei*.
6. Four *English* men, Brothers, I take it, hold *Wallope*.
7. *Edmund* holds Land of the King.
8. *Agemund* holds *Weldeve*.
9. Another *Agemund* holds *Hotlop*.
10. *Alwi* holds *Lockerlei*.
11. *Agemund* holds *Sotesdine*.
12. *Sawin* holds half an hide in *Rocheborne*.
13. *Ulviet* the Hunter holds *Riple*.
14. *Agemund* holds half an hide in *Tontone*.

15. *Alric*

15. *Alric* holds half an hide.
16. *Godric's* Sons hold *Haugre*.
17. *Alwin* holds two hides.
18. *Ravelin* holds *Clere*.
19. *Lewin* holds one Rood in *Clere*.
20. *Uluric* holds a *Mannor*.
21. *Alwin* holds *Merceode*.
22. *Cola* the *Hunter* holds half an hide.
23. *Saulf's* Wife holds *Hoburne*.
24. *Ulgar* holds one Rood in *Melleford*.
25. *Godric Malf's* Sons, hold one hide in *Esselei*.
26. *Aluric* holds one hide in *Einforde*.
27. *Aluric* holds a Rood and an half in *Utesel*. *Leving* and *chotel* held it. *Aluric* purchas'd it in the time of King *William*.
28. *Aluric* holds one hide in *Broceste*.
29. *Godric Malf's* Sons hold *Mintestede*.
30. *Oirant* holds *Celvecrote*.
31. *Alsi* holds *Abagine*.

The two next held in *Alodium* of the Confessor.

32. *Swartin*.
33. *Edwin*.
34. *Ralph Mortimer* holds several Possessions, some of which he had *jure hereditario*, from before the reputed Conquest. *Ipse Radulphus tenet Ordie:*

This Mannor T. R. E. extra Ecclesiam emptum fuit, eo pacto & conventionione, ut post tertium heredem cum omni pecunia Manerium Ecclesia Sancti Petri de Episcopatu recuperet, nunc qui tenet Radulphus, est tertius heres.

Berroche scire.

Barkshire.

De firma sua & solut.
ab omni consuetud.
propter Forestam cu-
stodiend. excepta fo-
risfactura Regis, &c.

Pater ejus tenuit de
Regina Edw.

1. Walter holds one hide in Cheneteberie which King Edward gave his Ancestors.

2. Edward holds one hide in Coserige, he held in Alodium of King Edward.

3. Alward the Goldsmith holds Sotesbroc.

4. Eldeva a Free-woman, holds in Henret one hide of the King in Frankalmoigne, which she held T. R. E. and could go whether she would.

5. Alwin holds Ceuresbert, which he held T. R. E.

Wiltscire.

Wiltshire.

1. Bričric holds, as his Father did, T. R. E. Wochesie, Straburg, Stratretone and Odestock.

3. Bričric

3. *Brictric* and *Alwin* hold *Co-lesfeld*. *Ipsē tenuit, T. R. E.*

4. *Aluric* holds *Wadone*.

5. *Aldred* holds *Bimerton*.

Ipsē tenuit T. R. E.

6. *Cudulf* holds *Wintreburne*.

7. *Cheping* holds *Haseberie*.

8. *Cola* holds *Gramestede*.

Pater ejus tenuit T. R. E.

9. *Gode* holds one Hide in *Stotecome*.

Ipsa tenuit T. R. E.

10. *Edwin* holds *Chigelei*.

11. *Edric* the blind, holds *Hertham*.

12. *Edward* holds *Widetone*.

Pater ejus tenuit T. R. E.

13. *Edmund* the Son of *Aculfe*, holds one Hide in *Bredford*.

14. *Harding* holds *Winestone*.

15. *Turchil* holds in *Contone*.

16. *Uluric* holds three Roods of Land in *Wintrested*, and one Rood in *Tuderlege*.

17. *Ulnod* holds $\frac{1}{2}$ Hide in *Bramessage*.

18. *Wendsey*, the Wife of *Titecome*, holds Land.

Vit ejus tenuit T. R. E.

19. *Lisman* holds three Hides in *Melchesham*.

20. *Wado* holds one Hide in *Bereford*.

Tenentes Terrarum
quas tenuerant eorum
patres, T. R. E.

Gest frater ejus tenuit
T. R. E.

22. *Otho* and *Swain* hold the
Lands which their Fathers held,
T. R. E.

23. *Savic* holds *Lachertestoche*.

26. *Ceviet*, *Aifild*, and *Eldid*,
held divers Lands which their
Husbands held T. R. E.

Dorsete.

Dorsetshire.

Terra Tainorum Regis.

Ipsē tenuit cum aliis
7 Tainis, T. R. E.

Pater ejus tenuit T.
R. E.

1. *Gudmund* holds *Midletone*.

2. *Bollo* the Priest holds *Maple-*
dore.

3. *Briðwin* holds *Waia*.

4. *Uluric* holds *Mordone*.

5. *Alward* holds *Tornecome*.

6. *Ulviet* holds *Winburne*.

7. *Godwin* the Head-borough,
holds one Hide in *Winteburne*.

8. *Swain* holds *Winteburne*.

9. *Uluric* the Hunter, holds one
Hide.

10. *Briðwin* above named, holds
Ciltecome.

11. *Briðwin* holds *Wadone*.

12. *Saward* holds eleven Rood
in *Canndele*.

22. Ten

22. Ten *Thayns* hold *Chimede-*
come.

Dis tenuerunt. T. R. E.
pro 1. Manerio.

Omnes qui has terras
tenuerunt T. R. E. Potuerunt ire ad quem Dominum volebant.

Somersetshire.

Summerfete.

1. *Briðric* and *Ulward* hold
Bochel, and

2. *Siward* holds *Ettebere*.

3. *Ulf* holds *Havechewelle*.

4. *Alward* and his Brothers, hold
Stoche.

Pater eorum tenuit T.
R. E.

5. *Godwin* holds *Draicote*.

Ipsē & mater ejus te-
nebant T. R. E.

6. *Aldwi*.

7. *Briðmar*.

8. *Alwerd*.

9. *Donno*.

10. *Huscarle*.

11. *Osmer*.

12. *Eldred*.

These hold several parcels of
Land.

Devonshire.

Devenescire.

1. *Colwin* holds *Chelesword*.

Ipsē tenuit T. R. E.

2. *Godwin* holds *Curemton*.

3. *Edred* holds a Furlong of
Land in *Bicheford*.

G 4

4. *Al-*

4. *Alward* holds *Colfovenescote*.
5. *Ausgot* holds *Madone*.
6. *Donne* holds *Niwetone*.
7. *Alwin* holds *Midelcote*.
8. *Edwin* holds *Buterlei*.
9. *Ulf* holds *Wadeham*.
10. *Algar* holds *Chevendestone*.
11. *Alric* holds *Wasberlege*.
12. *Aluric* holds *Essaple*.
13. *Lewric* holds *Betunie*.
14. *Saulf* holds *Dunesford*.
15. *Alvera* holds *Lacobescherche*.
16. *Alfhill* holds *Chennudestane*.

Bockingham-
scire.

De tennit T. R. E.

Buckinghamshire.

1. A certain Splay-footed man holds *Eurifel* in *Frankalmoign*.
2. *Lewin* holds one Hide in *Wavendone*.
3. *Lewin Cawra* holds in *Boneston Hund*.
4. *Chetel* holds in *Moslai Hund*.
5. *Godric Cratel* holds in *Midelstone*.
6. *Suarting* and *Herdin*, two Brothers, hold Lands in *Cotehale Hund*,

Oxford-

*Oxfordshire.**Oxeneford-*

All the Burgesles of *Oxford* scire.

have in Common without the Wall, Pasture yielding. 6 s. 8. d.

The County of *Oxford* pay the Rent of three Nights, that is, fifty pounds for Lands they hold.

1. *Theodoric* the Gold-smith, holds one Hide in *Nortone*, and two Hides and half in *Welde*, these Lands his Wife held freely, T. R. E.

*Staffordshire.**Statfordscire.*

Terra Chenwin & aliorum

Tainorum Regis.

1. *Chenwin* holds of the King *Ipse tenuit* T. R. E. three Hides in *Codeshale*.

2. *Dunning* holds *Chenestone*:

3. *Alric* holds *Stagrisgeshowe*. 2

4. *Afwold* holds *Chrochesdene*. 3

Ipsi has terras tenuerunt T. R. E.

14. More hold Lands of Titles prior to King *William's*, amongst which, the Earls *Hugh de Ferrers*, and *Alberic de Vere*; the first of which, held *St. Warburgh* of *Chester*, in the time of the Confessor.

*Notinghamshire.**Snotingham-*
scire.

2. *Elwin* and *Uviet* held one Carve of Land in *Osbernestune*,

now

(90)

now *Swan* and *Ulviet* hold it.

5. *Aluric*, *Buge*, and *Ulchet*, did formerly, and now do hold Lands there.

Yorkshire.

1. *Swen.*

2. *Ulf.*

3. *Turchil.*

4. *Chetel.*

5. *Ramechil.*

6. *Ravenchil.*

7. *Torchil.*

8. *Game.*

9. *Osward.*

10. *Tored.*

11. *Torber.*

12. *Uðred* held several Lands in the time of King *Edward*, as in the time of *William the First*. Besides several dispossest'd, who have their Titles allow'd.

Lindeshire.

Lincolnshire.

2. *Sortebrand* and *Chetelburn* hold several Lands.

3. *Godric* holds four *Oxganges*, which were *Agremund's* his Fathers.

Glo-

Glocestershire.

1. Chetel holds one hide and Glocestrescire.
the Rood in Wenrick.
2. Osward holds Redmerton. *Ipsē tenuit T. R. E.*
3. Edric the Son of Ketel holds
Landintone.
4. Eddiet holds Bichemerse. *Pater ejus tenuit*
5. Brictric holds four hides in T.R.E.
Lechamtone.
6. Alwold holds Pignoscire.
7. Edward the Son of Reinbald
holds Aldersnude.
8. 9. 10. 11. 12. Elsi, Dous,
Brictric, Edric the Son of Che-
tel, and Madoch, held Lands, as
in the former King's Reign.

*Hereforashire.**Herefordscire.*

1. Edric holds Last.
2. Elmer holds half an hide of *Ipsē tenuit T. R. E.*
the King.
3. Osborn the Son of Richard,
holds Mildetune.

In these 15 Counties, (of thirty de- *vid.*
scrib'd in *Domesday*) besides others left *Spelman*
out of this Survey, as *Northumberland*, *tit. Domes-*
Westmerland, the Bishoprick of *Durham*, *day.*
and *Lancashire*, except some part of it
be taken into *Yorkshire* or *Cheshire*, the
City

City of *Oxford*, and the Shire, which held Lands in their Publick Capacity several omitted through neglect, and others on purpose, as I before observed, there are above one hundred and eighty *Free-holders*, who derived not under King *William's* Title; and besides the Generality, whose Titles are not exprest, many of which however were of *English* names.

S E C T. 2.

Against
Mr. Petyt.
p. 29.

Our wise Author supposes, that King *William* gave all the Land of the *County of Cheshire* to *Hugh de Abrincis*, his Kinsman, and a *Norman*, and wisely ask'd, Whether this was all *Crown Lands*? The pretended Proof of this he brings in another Book. So that, for a long time, we must rely upon his Mastership's Authority.

Against
Jani. &c.
p. 15.

But this is his Demonstration.

In *Domesday-Book*, after 'tis said what belongs to the *Bishoprick*, *Totam reliquam terram Comitatus tenet Hugo Comes de Rege cum hominibus suis*. But, I can find no greater matter in this, than that under the King he was chief Lord of the

the Fee. But the gift of the whole County generally implies not any thing more than the Government of it. Thus, whereas he would have it, that the greatest part of Shropshire was given to Roger de Montegomerie, Domesday sayes, *Against Mr. Petyr. p. 29. Scyropes-berie.* he had the City of Shrewsbury, & tot. Comitatus. and the whole County. But that is soon explained, & totum Dominium quod Rex Edwardus ibi habebat cum 2 Maner. quæ Rex ipse tenebat, and the whole Power or Right to Govern it, which King Edward had there, with twelve Mannors which the King himself held: And this was all the Land that was given, but could not be the greatest part of the County.

Farther, for *Cheshire, Leofwick, King Cheshire. Domesday.* Edward's Brother, had it before in the same manner as Hugh had: And surely, neither he, nor his Brother conquer'd the whole County, nor had Ed. the Crown by Inheritance. And Lupus having it in the same manner that Leofwick had it before, 'tis evident, that this County was not held under the Feudal Law, brought in by William.

Besides, to shew that the Earl had not the whole County, 'tis manifest, there

there were many great *Proprietors* there as Earl Robert, who held *Westone*; Richard de Vernon who held *Estime*, Gislebert Venables, whose Family continues at this day: But indeed the Estate is in an Heir Female, and several others, some of which, for a long time, enjoyed the Dignity of *Barons*; which Dignity, I think, is not yet extinct there.

SECT. 3.

Against
Mr. Petyt.
p. 43.

WHereas this Friend to the *English* Nation, for so, doubtless, he has rendered himself, would impose upon us, as if *the English had neither Estates nor Fortunes left, and therefore, it could be no great matter to them by what Law Right, or Propriety other men held their Estates.*

I have already made it evident, that they had *Estates and Fortunes left*. I shall now shew, that they claimed their *Rights*, and had them allowed according to the Antient Law.

And before I come to this, or rather in Confirmation of it, I must observe that even lesser lawful Customs than those whereby the Descent of Estates was

was preserved, were continued after the
reputed Conquest : thus in the Burrough
 of *Wallingford* in *Berkshire*, were *Consu-*
etudines omnes ut ante fuerant. *Domesday.*

All the same Customs which were
 there before : so you shall find numerous
 Instances of the same Services, from the
 Lands or Houses, which were before ;
 nay, sometimes less, or none, when
 formerly there were some, as in *Surrey*.

Robert de Wate, holds one House,
 which paid all Services in the time of
 King *Edward*, now nothing at all.

But to the Claims or Titles allowed, *Al-*
dredus frater Ode calumniatur unam virga-
tam terræ de hoc Manerio, & dicit se eam te-
nuisse die quâ Rex Edwardus fuit vivus &
mortuus, & disaisitus fuit postquam Rex
Willielmus, mare transiit & ipse diratio-
navit coram reginâ, inde est testis ejus Hugo
de Port, & homines de toto hundredo. *Hantescire.*

" *Aldred* the Brother of *Ode*, claims one
 " Rood of that Manner, and says, That
 " he held it the day that King *Edward*
 " was alive and dead, and was dis-
 " seized after that King *William* past the
 " Seas ; and he recovered it before the
 " Queen : *Hugo de Port* is Witness of it,
 " and the whole *Hundred*.

'Tis

'Tis to be observed, that where the *County* or *Hundred* attests any mans Plea or Title, this is a solemn Judgment in *Domesday* Book, that being the way appointed of ascertaining Estates and Titles.

In the same County and Hundred, *Hugh de Port*, has his Claim allowed, *Hanc hidam calumniatur Hugo de Port dicens eam pertinere ad sua Maneria de Cerdeford, & Eschetune, & ibi eam tenuerunt sui antecessores & hoc testantur tot' Hundr'*. This Hide, *Hugh de Port* claims, saying, that it belongs to his Mannors of *Cerdeford* and *Eschetune*, and there his *Ancestors* held it, and this the whole *Hundred* testifies.

So the same *Hugh* claims three Houses and a Corner of a Field, and one Rood, and five Acres of Land, of *Turstin* the Chamberlain; and of this, he brings the *Hundred* to witness, that his *Ancestors* were seized, *Die quo Rex Edwardus fuit vivus & mortuus*.

The Tryal in this County between *William de Chornet*, and *Picot* the Sheriff of *Cambridgeshire*, is very remarkable, *In isto Hundr. & in isto Maner. tenet Picot*

In For-
cing-
bridge
Hundr. in
Clatings.

cot 2 Virgat. & dimidium & istam terram calumniatur Willielmus de Chornet, dicens pertinere ad Maner. de Cerdeford, feudum Hugonis de Port, per hereditatem sui antecessoris, & de hoc suum testimonium adduxit de melioribus & antiquis hominibus totius Comitatus & Hundr. & Picot contraduxit suum testimonium de Villanis, & vili plebi, & de prepositis, qui nolunt defendere per Sacramentum, aut per Dei iudicium, quod ille qui tenuit terram liber homo fuit, & potuit ire cum terra quo voluit, sed testes Willielmi nolunt accipere legem nisi Regis E. usque dum definiatur per Regem.

“ In that Hundred, and in that Manor, Picot holds two Rood and a half of Land; that Land, William de Chornet claims, saying, that it belongs to the Mannor of Cerdeford, of the Feud of Hugh de Port, by the Inheritance of his Ancestor. And of this, produced his Testimony of the better, and ancient men of the whole County and Hundred: and Picot on the other side, brought his of Villains, and inferiour People, and of Bailiffs, who will not defend by Oath, or by Gods Judgment, (which I take here, not to be the

H

Or-

Which
was the
Issue a-
gainst be-
ing of
Hugh de
Port's
Feud.

“ Ordail, but the Battail, as we find
“ the Tryals, *vel bello vel judicio*) that
“ he who held the Land, *was a Free-*
“ *man, and might go with it, whither he*
“ *would.* Here the County or Hundred
“ testifies, that the stress of *de Chornet's*
“ *Cause*, depends upon the *Confessor's*
“ Law, and so give the Title with
“ him.

In the *North and West riding of York-*
shire, many Claims may be seen, as of
Earl *Hugh*, which I take it, was *Hugh*
de Ferrers, *Henry de Ferrers* being dis-
seized in that County; and 'tis likely,
both claim'd by the same Title, *Hugh*
was a very considerable *Free holder*.

There are many others who are in
like Circumstances, as *George Malet*,
William Malet, *Orm*, and *Bunde*, *Osburn*
de Arcis, *William de Warren*, *Ligulf*,
Wido de Credun, *Percy*, *Sortebrand*, *Gi-*
slebert.

SECT. 4.

'Tis evident, that King *William* did
not so much as make a new Grant, or
Confirmation to men, of what was theirs
before, the old Title being sufficiently
firm:

firm: hence, in *Amelbrice* Hundred in *Surrey*, *tenuit Almaris sine dono Regis* èd *quod antecessor ejus Almar tenuit*; *Almar* held without the King's Grant, because his *Ancestor Almar* held it.

In *Glocestershire*, *Brictric tenet de Rege* 4 *Hidas in Lechametone* & *Geldant ipse tenuit earum* 2 *Hidas* T. R. E. & *Ordric alias duas*; *Rex Willielmus utramque eidem Brictric concessit pergens in Normaniam*.

Brictric holds of the King in *Lechametone*, four Hides, and they pay a Quit-rent: he held two Hides of them, in the time of King *Edward*, and *Ordric* the other two: King *William*, when he went into *Normandy*, granted both (that is, the two Hides which *Ordric* held) to *Brictric*; so that *Brictric* enjoyed the other two, not contained in the King's Grant, upon his prior Title.

SECT. 5.

Whereas this Author is pleased to exercise his reflecting Faculty upon that Lawyer in *Ed. 3.* Reign, who affirmed, *That the Conquerour came not at all to out those who had right Possession*,
 H 2 but

Against
 Mr. Petyt.
 p. 28.

Should be
 rightful.

p. 29.

but to out those, which by their wrong doing, had occupied any Land in Disinheritance of the King and of his Crown; (that is, such Land as was forfeited to the Crown, by their being in Arms against the King) upon which, he says, that this Judge spoke out of Design, and studied, and knew only popular and lucrative Law, and not the Constitution of the Nation before his own time.

p. 26.

p. 25.

'Tis manifest, that this free Censurer, studies only parasitical Law, and that if he were acquainted with *Domesday book* he would not censure this, nor would challenge his Adversary to find any one Plea or Grant of the like Nature; with *Swanborn's*, who pleaded, That he was never against the King.

Now, 'tis observable, that we find many Forfeitures mentioned in this Book, which were needless, if the King seized without; so in *Essex*, in *Barstable Hundr.* In *Burâ de istis Hidis est una de hominibus forisfactis erga Regem*; in *Bury*, one of those Hides belonged to the men, that were forfeited to the King; and this was the way of Expression: accordingly in the Active, we find in *Norfolk*, Earl *Ralf* held such Lands,
Quando

Quando se forisfecit. But more particularly, in *Cambridgeshire*; in *Wardunes Hardwin* holds of *Richard*; this did not belong to *Richard's* Ancestor, but *Ralf Waders* held it, *Die quo deliquit contra Regem*, that day on which he was in Arms or Rebellion, offended against the King, and so forfeited; whereas, otherwise it had continued with him: but this compar'd with *Indulphus* the then King's Secretary, makes a full proof.

' *Erle Ivo* sends to *Anjou*, to the Abbot of *St. Nickolas*, and gives a Cell, Lands and Tenements, for a *Prior* and five *Monks*, in *Spalding*.

' *Wulketul* Abbot of *Croyland*, commences his Suit for this, in *Curia Regis*, all the *Normans* being confederate together, justifie and approve of the Depredations, Oppressions, Slaughters, and all other Injuries committed by *Ivo Talbois*, against the *Croylanders*, and as in the body of *Behemoth*, one Feen is joyned to another, they refute the Truth. And that which added to the Heap of the Calamity of *Croyland*, was the cruel beheading of *Erle Walden* of *Croyland*, who was very kind to all the Religions, and was chiefly the best and most wor-

Indulphi
Hist. fo.
902.

According
to our Au-
thor, he
had all the
Lands of
these
Counties,
whereas
the King
had some.

thy Friend to the Monastery of *Croy-*
land; and although Arch-bishop *Lan-*
franc his *Confessor*, asserted, that he was
free from all *Faction* and *Conspiracy*, and
if he died in the Cause, that he would
be a Martyr; yet his most impious Wife
thirsting after another Marriage, and
therefore, most wickedly hastening the
Death of her Husband. Also, some
Normans gaping after his Counties of
Northampton and *Huntington*, especially,
the *Anjovin Erl* *Tro Talbois*, thirsting
for his Blood, being most greedy for his
Lands and Tenements, which were ve-
ry many, in all the Counties of *England*,
the innocent and harmless man is mar-
tyr'd at *Winchester*, the day before the
Kalends.

Here we see they were forc'd to ac-
cuse him of *Faction*, and *Conspiracy*, or
Rebellion, that the Lands might be for-
feited to the Crown, and they might
get them for their good Service.

Our *man of mighty Undertakings*,
thinks to set aside *Edwin of Sharburn's*
Evidences, and exposes the Credulity
of his Friend *Sir William Dugdale*,
(whose Obligation for leading him
the way, in his *Origines Juridiciales*, he
has

has returned to the purpose) because he tells us, *Sharnburn's* name is not to be found in *Domesday book*, or the *Conquerour's Survey*; and the Owners of *Sharburn*, which are there only to be found, are *William de Warennâ*, *Odo*, Bishop of *Bajeux*, *Bernerius Arbalistarius*, and *William de Pertenac*.

'Tis not material that they are reputed Owners, since *Sharborn* had the King's Mandat, and possibly might not have the Possession restored, till after this Survey. p. 25.

2. Often, only the chief Lords of the Fee are named, though not all the *Proprietors* under them.

3. Though we find not *Edwin of Sharburn*, we find in the same County, *Edwin* a *Proprietor*, and Lord of a *Mannor*, with a *mesne Lord* under his *Bailiwick* and *Care*, though not holding of him, *Sislanda tenuit Ketel liber homo Edwini commendatus tantum pro Manerio, & duo Car. Ketel Edwin's Free-man* held *Sisland* within his *Bailiwick*, only for a *Mannor*, and two *Carvs* of Land.

Now, 'tis very obvious, that there were great *Proprietors*, whose *Christian Names* only, were mentioned in

They are
frequently
named
without
their Ad-
ditions.

*Florentius
wigornien-
sis.*

Domesday book, to be sure, not all the Addition by which they were known; to instance, in *Edric cognomento Sylvaticus*, this Surname of his, is not to be found there, (as I take it) and yet he kept great Possessions, which he had of a Title, prior to *William's*.

Eo tempore, extitit quidam prepotens Minister Edricus, cognomento Sylvaticus, cujus terram, quia se dedere regi dedignabatur, Herefordenses Castellani, & Ricardus Scrob, frequenter vastaverunt, sed quotiescunque super eum irruerant multos è suis militibus, & Scutariis perderunt. ' At that time, there was a certain powerful Officer, *Edric*, whose Surname was *Sylvaticus*, whose Land because he scorn'd to yield to the Conquerour, the Castellans of Hereford, and *Richard Scrob*, often wasted; but, as often as they fell upon him, they lost many of their Souldiers and Tenants by *Knights Service*.

*Flor. iii.
f. 635.*

Hitherto he had kept his Lands; and a little after, we find the King and him reconciled, *Vir strenuissimus Edricus cognomento Sylvaticus, cujus supra meminimus cum Rege Gulielmo pacificatur.* And soon after this, he accompanies the King

King to Scotland; but if the Dr. finds him by this Addition in *Domesday book*, I will allow him to be a man of a very sagacious Invention. p. 26.

4. We find whole Counties left out of *Domesday book*, and therefore, admit Edwin were not there, 'tis not strange, that he, though a *Proprietor*, should be omitted, if it were only through the Influence of *Erl Warenn*: Notwithstanding the Exceptions taken to what he calls the famous Legend, and trite Fable of Edwin of Sharnborn, he himself confesses, that he had the King's Mandat; and so this Plea was allowed in the very Instance, which he thinks to be on his Side.

How idle is his note on the Margin of p. 24. against Mr. Petyt. Against Mr. Petyt. Ec. p. 19.

Can any man forfeit his Lands to a Stranger, a Conquerour, that could not pretend Title, but by Violence and Conquest? As if a Conquerour could not make what he pleas'd a Forfeiture, and were not the more likely to use Rigor, for being a Stranger, having no Tyes of Familiarity or Blood: besides will not a Conquerour, pretending an Hereditary Right make them who oppos'd it, forfeit? And

And it shall be taken for just too, by them who acknowledge his Title. Nor is there more, to *favour his Fancy*, that King *William*, by giving away the Lands of *Great men*, nay, whole *Counties*, or the *Government* of them, thereby defeated the Inheritance or lesser Rights of those who held under them.

As if, for the purpose, the King should grant away the Estate of the *Lord Stafford*, which, if any were left in him, after any Settlement, was really forfeited; thereby, all that had Leases under him, or any other Interest, were wholly divested, which were to make the Attaindure to reach farther than the Blood.

S E C T. 6.

BUT, because our Author is a very *sagacious* Person, for Informations sake, I am bold to ask him some Questions, occasioned by *Domesday-book*.

Sorry.

In *Andover Hundred*, *Rex tenet in dominico Cladford, de feudo Rogeri Comititis*.

If this had been the King's own Feud, 'twould have been, *Rex habet de feudo suo*,

by *quo*, as we find *Robert de Statford* had thirteen houses, *De honore Comitum de feudo suo*. Wherefore, *Quere* whether all the Lands of the Kingdom were held immediately or immediately of the Crown?

What thinks he of *Est de regno Angliæ, non subjacet alicui Hundredo, neque est in consuetudine ullâ*? So in *Surrey*, *Non adjacet alicui Manerio*; or, as elsewhere, *Fuit posita extra Manerium*; or, such an one is *commendatus homo* to another; *Glof. tit. commenda-* who, if we believe *Sir Henry Spelman*, *re.* swore no Fealty, and held not by any kind of Tenure?

What of *Nunquam geldavit, or geldum dedit, nec hidata fuit, or, distributa per Hidas*?

What of *potuit ire cum terrâ quo voluit, potuit se vertere ad alium Dominum*?

Which, I should think, argued Freedom from the *Feudal Law*?

And, what of *Tenet in alodium de Rege, Tenent modo 4 Alodiarum*, and the like, which to me seem of the same kind with the former?

What of this, which methinks destroys all his *Whimseys*, That under the Title of *Terra Tainorum Regis*, such as he will tell us, held by *Barony*, we find
seve-

Spelman's
Glof. tit.
Alode.

Glof. p.
29.

ib. p. 30.

several men holding in *Alodium* of the Seizin of their *Ancestors*? To instance only in one, *Edulf tenet de Rege in Alodium unam mansuram in Mortelhante pater ejus tenuit*? Such as he, were Socmen, or Tenants in *Free Socage*. And indeed, we are fully resolved of this Question, in his incomparable *Glossary*, the *Alodiarum*, or *Socmen & liberi homines*, that were Possessors of small Parcels of Land, but of what *Quality* and of what *Interest* in the Nation, *Dicat Apollo*, were the same with *Milites*, and with *Thayns*.

The *Free-men* there, or *Tains*, *Thegn*es, which are said to possess *Mannors* *Towns*, or great parcels of *Towns*; very many whereof, are found in the Countie bordering upon *Wales*, with this Addition *Et liber homo fuit, or potuit ire quod voluit*, were the same with *Milites*, and *Liber homo* attributed to such Possessors was the same with *Miles*.

In Confirmation of the Truth, he speaks by chance, *Bollo Presbyter tenet Mapledore, ipse tenuit cum aliis septem Tainis* T. R. E. *Bollo*, a Priest, held *Mapledore*, he held it with seven other *Thayns*, in the time of King *Edward*; so that an ordinary *Mass Priest* was a *Thayn*.

So ten *Thayns* held but one *Mannor*, de-
cem Taini tenent Chemedecome.

In *Cheshire*, some *Thayns* did Villain
 Services, *Omnes Taini dicti manerii ha-* *waldestrich*
merunt consuetudinem reddere undecim oras *Hundr.*
denariorum de unaquaque carucatâ terræ
& faciebant per consuetudinem domos Regis
& quæ ibi pertinebant sicut Villani. Nay,
 we find a *Thayn*, *Azor's* man or *Fendal* *In Bo-*
Tenant, much more was a free *Tenant*, *ingham-*
 one that could quit his Lord when he *shire.*
 pleased, *Tainus.* *Sigelei*
Hundr. ul-
chetone hoc

M. tenuit AZOR filius toti Tiignus Regis Ed. & alter Tiignus homo ejus.

But, if such *Thayns* as these, were ob-
 liged to attend the King in his Wars,
 were numerous and considerable, 'tis
 not probable, that they were bound by
 the Acts of Tenants in *Capite* : it may
 not be impertinent, to shew some of the
 vast number of *Knights*, who held of
Subjects. I purposely, as elsewhere, leave
 out the Church, with it's Tenants.

Under the *Earl of Arundel*, *Pettevr-* *Lib. Rub.*
tha holds two and twenty *Knights Fees*, *in Scacca-*
 and an half. *rio, in the*
time of H. 2.

Garinges eleven.

Holnoc twelve.

Under the *Earl de Augo* in *Rapa Hast-*
ing, *Matthem de Burlin* holds ten *Knights*
Fees. *Ro-*

Suffex.

Robert de Ricaruele ten

Richard the Son of *William*, holds fifteen *Knights Fees* of *Richer de Aquila*.

In *Cornwal*, *Robert* the Son of *William*, besides fifty one other *Knights Fees*, which, perhaps, he held of the King, holds twenty of *Walter Hai*.

Richard de Lucy, holds of the Feud of *Ode Malherb*, nine *Knights Fees*.

Under the *Earl of Glocester*, *Jordan Sorus*, held fifteen *Knights Fees*; *Robert de Charâ* ten, five others held ten, and four, nine *Knights Fees*.

Buckinghamshire.

Hugh de Bolbech owes the *Earl* the Service of twenty *Knights*.

Worcestershire in Civitate Wirc. &c.

Here are above 170 *Knights Fees*, not held of the King, and, yet I doubt not, but the Owners were to attend the King in his Wars, something agreeable to the Custom within the County of *Worcestershire*.

Quando Rex in hostem pergit, si quis edicto ejus vocatus remanserit, si ita liber homo est ut habeat Socam suam & Sacam, & cum terrâ suâ possit ire quo voluerit, de omni terrâ suâ est in misericordiâ Regis; cujuscunque verò alterius Domini liber homo si de hoste remanserit, & dominus ejus pro eo alium duxerit 40. solidos Domino suo

(III)

suo qui vocavit emendabit; quod si ex toto nullus pro eo abierit, ipse quidem domino suo 40. solidos dabit, dominus autem ejus totidem solidis regi emendabit. ‘When
‘the King goes against the Enemy, if any
‘body call’d out, by his Writ, stay’d at
‘home, if he be so free, that he has Suit
‘and Service of Court, and can go with
‘his Land whether he will, he is in the
‘King’s Mercy for all his Land; but,
‘whatever other Lord’s Freeman he is,
‘if he stay from the Enemy, and his
‘Lord hire another for him, he shall
‘forfeit 40. Shillings to his Lord, who
‘called him out: But, if no body at all
‘go out for him, he shall give his Lord
‘40. Shillings, and his Lord shall forfeit
‘as much to the King.

This, I take it, as to the Obligation for Attendance, differs not from St. Edward’s, and William the First’s provisions for Arms; Henry the Second’s Assize, and the Statute of Winchester, this only adds a particular Penalty; all which together, especially Domesday-book, manifestly contradict his *Legendary Tales*, about King William’s governing the Nation as a Conquerour.

Animad.
on /an.
&c. fo. 17.
Against
Mr. Petyt,
p. 29.

And,

And, if the intended History of the *Conquest*, which has taken him up above these ten years, as I have upon better Information, than he had my not having seen above two of the *Original Records* which I cite, be suitable to this marvellous Essay, 'twill make a *bulky Legend*.

CHAP. III.

A Property prov'd by Record, to have continued from within the Reign of the Confessor, to the 26. H. 3. Besides Pitaviensis and Knyghton on our side.

ADditional to the Testimony of *Domesday book*, I shall produce a *Record*, as late as the 26. *Hen. 3.* which shews, That a *Property* was continued in the *English*, from before the Reign of the *Norman Prince*, to that very time; and gives Credit to the Authors, who tell us, that this Prince did not govern as a *Conquerour*.

Pro Jacobo Archamgere.

Rex Baronibus, mandamus vobis quod occasione arrentacionis Serjantiarum, assesse

*Communia
de term.*

*Sancti
Mich. 35*

fin. & anno 36 incipien. H. 3. Rot. primo. Penes Remem. Domini Thef.

per

per Robertum Passelewe, non distringas
 Jacobum de Archamgere per 2 Marc. &
 dimid. de tenemento quod de nobis tenet per
 Serjantiam in Archamgere, (in Comita-
 tu Southampton, &c.) per Cartam beati
 Regis Edwardi antecessoribus ipsius Jaco-
 bi super hoc confectam; sed ipsum Jaco-
 bum de predictis 2 Marcis & dimid. qui-
 etum esse faciatis in perpetuum; quia Car-
 tam prefati beati Edwardi confirmavimus,
 & ipsam volumus inviolabiliter observari.

Serjantia
 tempore
 Edw.
 Confess.

Breve est in forulo Marescalli & man-
 datum est Vicecomiti Southampton
 comparat. die Jovis, die 15. Jan.
 Anno Domini, &c.

' The King to the Barons: We com-
 ' mand you, that by occasion of the
 ' Rent of Serjantie, asselt by Robert Pass-
 ' elewe, you do not distrain Jacob de Ar-
 ' chaungere for two Marks and an half,
 ' for the Tenement which he holds of
 ' us by Serjanty in Archamgere in the
 ' County of Southampton, by the Char-
 ' ter of the Blessed King Edward, to the
 ' Ancestors of this Jacob; but for ever
 ' free the said Jacob from the foresaid
 ' two Marks and an half; because we
 I have

‘ have confirmed the Charter of the fore-
 ‘ named *St. Edward*, and will have it
 ‘ inviolably observed.

Here is an *inspeximus*, in effect, of the
Confessor's Charter, and the Confirmation
 lies in the Judgment, that this was
 that King's Charter.

Whether the *Serjanty* here mention'd
 were the *greater*, which was
 Military Tenure, for such there
 was before *William's* Entrance.
 Mr. *Selden* indeed opposes this,
 and contends, that what lay up-
 on Lands then was no Tenure
 from any Reservation, but one-
 ly what the Law of the Kingdom had
 made incident to all Lands. Yet I see
 not how that will solve a special Refer-
 vation of a certain number of men :
 Or, whether the *Serjanty* were the *Lit-
 tle* or *Petit Serjanty*, is not within our
 Dispute, because either way here is
 sufficient Evidence that there was a *Pro-
 perty* left in the *English*, notwithstanding
 the *Clamour* of a *Conquest*. And that
 we did not receive our *Tenures*, and the
 manner of holding our *Estates*, in every
 respect, from *Normandy*, brought in by the
 Con-

In *Kenulph* the *Mer-
 cian* King's Charter,
 a discharge of all
 Services but the Ex-
 pedition of 12 men
 with Shields.
Burgote, &c.
White's Sacred Law,
 P. 149.

Against
Petit. p. 31.

Conquerour. For this man held in the same manner as his *Ancestors* did in the time of *St. Edward*.

And with this agree good Authors, *Gulielm. Pictaviensis, p. 208.*
Nulli Gallo datum quod Anglo cuiquam iniuste fuerit ablatum. 'There was not
 'given to any French-man, what was
 'unjustly taken from any English-man.

Now this was a *Poictovin*, many of *Against Petyt, p. 35.*
 which came in with Duke *William*, and is more to be credited in this matter than the *English Monks*; who, since he reduc'd the *Bishopricks* and great *Abbies* to *Baronies*, thought this Injury done to the Church, as they took it, was no way to be accounted for, unless he were represented as taking from the *Laity* their *Property*, which they thought a much lower instance of his Power, than giving this Law to the *Clergy*, God's special Lot and Portion. But, on the other side, this *Poictovin* was more likely, for the Glory of *William's* and his Country-men's Arms, to represent them as great as might be in the number of their Slaves; and to have a whole Nation of them, is, doubtless, a glorious thing in the Doctor's eye.

Knighton,
p. 2343.
lib. 2. cap. 2.

And, with this *Poitouin* may be joyned honest *Knighton*, who sayes, *Quidam possessiones habentes de dicto Wilhelmo, seu ab aliis Dominis, quidam vero ex emptione habentes, sive in Officiis sub spe habendi remanserunt.* ‘ There were ‘ some who had Possessions of the said ‘ *William*, but some who had them by ‘ *Purchase*, or else, who remain’d in Offices, under the hope of having some, ‘ (as their Offices might enable them to ‘ purchase.

Here some of the *Normans* were forc’d to purchase, otherwise they had gone without Possessions. And this must have been of the *English*, otherwise they would have divided the Land amongst themselves, with their Prince’s consent, and need not have made other payment than the Venture of their Lives.

C H A P. V.

The Socmen enjoyed Estates of Titles prior to the Suppos'd Conquest.

BUT, besides the uncontrollable Authority of *Domesday-book*, and the Testimony of Authors, well back'd with a plain *Record*, with the Doctor's good leave, I shall add another Argument, to prove the continuance of the *English Rights*, or that *William* govern'd not as a *Conqueror*. He may know that there were such men as *Sokemanni*, whose Lands were partible, and who held not by *Knights Service*. Whereas King *William* granted out the whole Kingdom, as the Doctor fondly imagines, by *Knights Service*, and the Lands of such Tenants descended to the eldest Son; wherefore, the *Sokemanni* must needs enjoy their Estates upon Titles prior to King *William's*, not deriving under his Grant; since their Lands, to obtain that Tenure, must have been *anciently divided* before the time of *H. 2.* But, if there were any Evidence to the contrary, there could have been no Pre-
Glarvil,
lib. 7.
cap. 2. in-
fra.

scription to the Tenure. And surely, if it was no ancienter than King *William's* Title, the Evidences of the contrary could not be lost.

*Lambert's
Peramb. of
Kent,*

Suppose Lands holden in *Free-socage*, were forfeited to the King, (in which Case, Mr. *Lambert* yields, that the Tenure may be alter'd) and he granted it out, to hold by *Knights Service*: how could a Custom prevail to alter this Tenure, contrary to the very Grant? If they could produce their Deeds, they shew'd themselves to be Tenants by *Knights Service*. And, there were so many *Sockemanni*, even in one County, that of *Kent*, that though some Grantees might lose their Deeds, yet not so many as there were distinct Estates in *Socage*. For Proof of the Premises to my Conclusion.

(1.) That there were *Sokemanni* before *William*; nay, that for the most part at least, Land-owners were such,

appears from *St. Edward's Law*.

This obliged all men to bear Arms, proportionably to their real or personal Estate, which last, together with the Land of him that dyed in the Wars, was to be

Leges Sancti Edwardi de Heretochiis, habeant Heredes ejus pecuniam & terram ejus sine aliqua diminutione & recte dividant inter se.

be divided among his Heirs. And surely, the Law does not suppose that they must always be female Heirs.

Such as dy'd in the Wars, who were Tenants by *Knights Service*, according to our Authors Sense of *Qui militare servitium debebant*, were *Sokemanni*, holding in free *Socage*, as *Glanvil* explains it, *Si fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios quotquot sunt per partes equales, si fuerit Socagium & id antiquitus divisum.* 'If a man be a free Sokeman, then indeed his Inheritance shall be divided amongst all the Sons, if it be *Socage*, and that anciently divided.

Glanvil.
lib. 7.
cap. 2.

It was not improper to say, if it be *Socage*, because a *Sokeman*, in respect of some Lands, might have others, not held in free *Socage*. This is sufficient Evidence, that such there were, after the Noise of Conquest, and that the Lands were to be *anciently divided*.

(2.) The Estates deriv'd from the Conquest, were, according to our bulky Author, held by *Knights Service*. Nay, the second part of the Glossary, which the Dr. invidiously imputes to Sir Henry Spelman, tells us, that *though*

Glos. Tit.
Parl. Ter-
ram totam
ita disposu-
it ut suum
quisque pa-
trimonium
de Rege te-
neret in
Capite.

Against
Jan. &c.
p. 99.

William was no Conquerour, yet he divided out, and disposed of all the Land to his great men: so that even the Normans Estates were taken away too. And this, that erroneous Glossary makes under the Feudal Law too; for, from thence 'tis inferr'd, that the great Tenants in Capite, had Right to impose Laws upon them that held of them, and to exclude the whole Kingdom besides, from the Great Councils.

Against
Mr. Petyt.
p. 35.

This (though no Conquerour) the Dr. left out, either as being ashamed of it, being 'tis little less than a Contradiction, to say, a man was no Conquerour, and yet seized upon all the Lands of the Kingdom, and forc'd them to submit to such Seizure; so that he conquer'd the Land: or, because it contradicts his Notion of William's being a Conquerour; so that he himself had as much reason to except against this Book, as others; but, it seems, out of a stark Love and Kindness to Truth, he left only what was against him, but took what was for his Purpose. And for the Support of it's Credit, tells us a formal Story; the Attestation to which, from outward Circumstances, I never thought it worth the

the while to examine, since I have so much Reason from within it self, to believe it to be *spurious*, and so ought he. Against For, if he have any respect to that great *man's* Memory, he will not suffer him to say, that *William* divided out the whole Kingdom, to hold under the *Fendal Law*; when before he had observ'd of *Gavelkind*, the general Tenure of the Lands in *Kent*, *Fendalibus legibus non coercetur*. *Pety. p. 13.*

(3.) The Lands of all these Grantees of King *William* the First, descended to the eldest, being held in *Knights Service*. *Si miles fuerit vel per militiam tenens, tunc secundum jus regni Angliæ primogenitus filius patri succedit in totum.* If a Glanvil. lib. 7. c. 2. man be a Knight, or holding by military Service, then, according to the Law of the Kingdom, the Eldest shall succeed his Father to the whole. But for the greatest Authority, we have an Act of *Parliament*; which, having full Power to alter the Tenure, enacts, that 31 H. 8. c. 3. certain Lands in *Kent*, shall descend as *Lands at Common Law*, and as other Lands in the said County, which never were holden by *Knights Service* us'd to descend,

Here

Here the Descent of *Knights Service* is the same with Descent at the Common Law, which was to the Eldett; and this is oppos'd to the Descent of Lands in *Gavelkind*, which was *Socage*.

And thus have I proved every thing, which upon this Head was needful, to vindicate the Right of the *English*, and to prove that their Rights were own'd in Practice, notwithstanding the vain Flourish of a *Conquest*.

It may be objected, perhaps, that the *Fendal Law*, which was exacted and observed by, and upon only the Normans, might have related only to such as held immediately of the King; for that his Grantees might and did often grant out to others and their Heirs for ever, to hold in *free Socage*. Yet, this will not do, because such Grantees would have been *Free-men*; but, all the *Free-men* of the Kingdom, were Tenants by *military Services*, though by their Tenure, any of them were only to pay a Rose, a Spur, a Sum of Money, or any other thing.

Therefore, hereby is my Argument inforc'd, if *William* had been a *Conquerour* in the Sense strove for, as disseizing
all

all the *English*, and making Grants of their Lands to the *Normans*, and that to hold by *Knights Service* ; and all the *Normans*, both they who were here before *William's* Entrance (if any such had any shares allow'd them) and they that came in with him, or followed for the spoil, were under the *Feudal Law*, requiring *Knights Service* ; and these were the only *Free-men*. How came there to be such a Race of lawless *Free-men*, as the *Sokemanni* ? And how is it p. 31. possible, that the manner of holding our Estates in every Respect, with all the Customs incident thereto, should be brought in by the Conquerour ? Whoever reflects up- p. 29. on these things, will (as he says of a reverend Judge) acknowledge the *Dr.* to be very ignorant in the History of this Nation, or that he spoke out of Design, the words which I fairly cite from him, in relation to the Conquest, and the Great Council, suppos'd to have been establish'd thereby.

CHAP.

CHAP. VI.

Proved from the Beginnings of Charters and Writs, that the English were not disseized of all, by William the First.

Domesday.

Vid. numbers in the Monasticon.

Carta W. I. Monasticon. vol. I. f. 397.

THough even the former Head of the Socmen, such as I find holding in *parigio*, was a needless Addition to the particular Consideration of *Domesday book*, which might serve instead of a thousand proofs, that *William the first*, did not divide all the Land of the Kingdom to his Followers; and consequently did not impose upon the people, such a Representative as is fondly conjectured. Yet, I cannot omit the mention of those numerous *Writs and Charters*, which are directed, *Omnibus Baronibus & hominibus suis Francis & Anglis*. Or, as one of the *Charters* of *William the First*, into one County, and so on occasion, into all *Archiepisc. & Justiciariis, Vicecomitibus, Baronibus & fidelibus suis Francis & Anglis Eboracire*.

Admit, that *Fideles* signified *Feudal Tenants*, this shews, that the English had

had shares as well as others ; but, here being the *Vicecomites* before *Barones*, I should vehemently suspect, That the *Free-holders* of the County were meant.

At least, we find the ordinary *Free-holders*, and they *English* as well as *French*, complemented by *Matildis*, as persons of some *Quality and Interest in the Nation*. *Carta Antiqua n. 11.*
Vid. his Glos.

Matildis, Dei gratia Anglorum Regina Episcopo London. Justiciariis, Vicecomitibus, Baronibus, Ministris, & omnibus fidelibus Francis & Anglis.

Here being *Ministri* between *Barones* & *fideles*, the *Ministry* must be such, as by their *Tenures* were bound to attend in the Wars, and the *Fideles*, the King's ordinary Subjects, there being no *Mat. Paris* to explain *fideles* here, and help us out of this *Difficulty*, which is made greater by King *Stephen's Charter*, *Archiepis. Episcopis, Abbatibus, Comitibus, Justiciariis, Baronibus, Vicecomitibus, Ministris, & omnibus fidelibus suis Francis & Anglis totius Angliæ*. Nay, to perplex the Cause the more, we find under Subjects *Free-holders, English* as well as *French*, and these were such as were the *Curia Baronum*, where Tenants in free and

and *common Socage*, were Suitors as well as such as held by *Knights Service*.

Willielmus Comes Gloucestræ, omnibus Baronibus, & hominibus suis Francis & Anglis, atque Walensibus.

*Vid. Tay-
lors Hist.
of Gavel-
kind.
Jani Angl.
P. 41.*

'Tis not improbable that the *Welsh*, which were some of his Tenants, were then all *Socagers*: but then the *Codex Rossensis*, shews how greatly the *English* were interested in the Counties, in the time of *William the First*.

Præcepit Rex Comitatum totum absque morâ considerare, & homines Comitatus omnes Francigenas & præcipuè Anglos in antiquis legibus & consuetudinibus peritos in unum convenire.

But, of this more, when I come to shew at large, that others, besides Tenants by *Knights Service*, served on *Juriers*, &c.

It farther appears, that by Degrees the *English* were much more considerable than the *Normans*, or other *Strangers*; for that they were all lost and swallow'd up in the great body of the *English*: and therefore they only are named up on all occasions. And I believe, as far back as *Henry the Second's* time, the *French*, *eo nomine*, will not be found di-

distinguish'd ; but, if however, the Tenants in *Capite*, or such as were their Tenants by *Knights Service*, which was laid upon only the Normans themselves, were the only governing part, and the only Members of the Great Council, the Justiciaries, Chancellors, Lawyers, the Ministerial Officers, and Under-Judges, Earls, Sheriffs, Bailiffs, Hundredaries, the legal man, and Jurors.

Against
Mr. Petyt.
p. 43.

Against
Mr. Petyt.
p. 30. 39.

The Government must needs have been too weak to support it's self, when the Ballance of Strength, and Property, was in other hands; and therefore 'twas morally impossible, that only Tenants in *Capite* should have been allowed to be of the Great Council, when the Nation made Terms for it self, upon the Success of their Arms, 16 of King John.

CHAP.

CHAP. VII.

The Charters of William the First, and King John, considered: with a Confirmation of the Notion of the ordinary Curia, distinct from the great or general Councils.

SECT. I.

I know but of two *Mediums* used by the Dr. which look like *Arguments*, to prove that the Tenants in *Capite*, by *Military Service*, were the only *Nobility*, or the *only* persons which composed the *Great Councils*.

1. *The Grand Charter of William the First.*

2. *That of King John.*

1. He insists upon two Branches of the first Charter.

Vid. Jani
Anglorum
facies nova
P. 22.
Against
Mr. Petyt.
P. 37.

Volumus etiam ac firmiter præcipimus & concedimus, ut omnes liberi homines totius Monarchiæ regni nostri prædicti habeant & teneant terras suas & possessiones suas bene & in pace liberè ab omni exactione injusta, & ab omni tallagio; ita quod nihil ab eis exigatur vel capiatur, nisi servitium suum

suum liberum, quod de jure nobis facere debent, & facere tenentur, & prout statutum est eis, & illis à nobis concessum jure hæreditario in perpetuum, per commune concilium totius regni nostri prædicti.

The second Branch is,

Statuimus etiam & firmiter præcipimus, ut omnes liberi homines totius regni sint fratres conjurati ad Monarchiam nostram, & regnum nostrum pro viribus suis & facultatibus contra inimicos pro posse suo defendendum, & viriliter servandum pacem & dignitatem Coronæ nostræ integram observandam, & ad judicium rectum, & justum constanter omnibus modis pro posse suo, sine dolo, & sine dilatione faciendum. P. 39.

This Author would gather from hence, that all *Free-men* were Tenants Against in Military Service; that these were the only legal men, &c. Whereas, if the Division had not made a Difference in his partial Judgment, he might have found all this to have been fully contained in one of the *Laws* of the Confessor, where they receive another kind of Explanation. Mr. Petyt. P. 39.

Et ut verum fatear habent etiam Alder-manni in Civitatibus regni hujus, in Ballivis suis, & in Burgis clausis, & muro Vallæ. Leg. Ed. de Gr. ve.

Vallatis, & in Castellis, eandem dignita-
tem, & potestatem, & modum qualem ha-
bent præpositi Hundredorum & Wapenta-
chiorum in Ballivis suis, sub Vicecomite
Regis per univèrsum regnum. Debent enim
& Leges, & Libertates, & Jura, &
pacem Regis, & justas consuetudines regni
& antiquas à bonis prædecessoribus appro-
batis, inviolabiliter, & sine dolo, & sine
dilatione, modis omnibus, pro posse suo ser-
vare, cum aliquid verò inopinatum, vel
dubium, vel malum, contra regnum, vel
contra Coronam Domini Regis forte in
Ballivis suis subito emerferit, statim pulsa-
tis campanis, quod Anglicè vocant MOT-
BEL, convocare omnes & univèrsos quod
Anglicè dicunt Folcmote, Vocatio & Con-
gregatio populorum & gentium omnium,
qui ibi omnes convenire debent, & univer-
si qui sub protectione & pace Domini Regis
degunt, & consistunt in regno predicto, &
ibi providere debent indemnitatibus Corona
regni hujus per Commune Concilium, &
ibi providendum est ad insolentiam malefa-
ctorum reprimendam ad utilitatem regni.
Statutum est enim quod ibi debent populi
omnes, & gentes univèrsæ, singulis annis
semel in anno convenire, scilicet in Capite,
Kal. Maii, & se fide, & Sacramento non
fracto

fractio, ibi in unum & simul confederare,
 & consolidare, sicut conjurati fratres, ad
 defendendum regnum contra alienigenas, &
 contra inimicos, una cum Domino suo rege,
 & terras, & honores illius omni fidelitate
 cum eo servare, & quod illi ut Domino suo
 regi intra & extra regnum universum Bri-
 tanniæ fideles esse volunt. Ita debent fa-
 cere omnes Principes, & Comites, & simul
 jurare coram Episcopis regni in Folcmote;
 & similiter omnes Proceres regni, & Mili-
 tes, & liberi homines universi totius regni
 Britanniae, facere debent in pleno Folc-
 mote fidelitatem Domino Regi, ut prædictum
 est, coram Episcopis regni, &c. Debent eti-
 am universi liberi homines totius regni jux-
 ta facultates suas, & possessiones, & juxta
 Catalla sua, & secundum feodum suum, &
 secundum tenementa sua, arma habere, &
 illa semper prompta conservare ad tuitionem
 regni, & servitium Dominorum suorum,
 juxta præceptum Regis explendum, & per-
 agendum.

So Willi-
 am's Law.

‘ And to speak the Truth, the Alder-
 ‘ men have also in the Cities of this
 ‘ Kingdom, within their Bailiwicks, and
 ‘ in Burroughs inclosed and walled a-
 ‘ bout, and in Castles, the same Dignity,
 ‘ Power, and Manner, under the King’s

‘ Sheriff, throughout the Realm: for,
 ‘ they ought *inviolably*, and without
 ‘ Fraud or Delay, by all means, to their
 ‘ Power, to keep the *Laws, Liberties,*
 ‘ *Rights, Peace of the King, and the just*
 ‘ *and ancient Customs of the Kingdom, ap-*
 ‘ *proved of by their good Predecessors.* But
 ‘ when any thing unexpected, or doubt-
 ‘ ful, happens to fall out of a sudden,
 ‘ within their Bailiwicks, against the
 ‘ Kingdom, or against the Crown of our
 ‘ Lord the King, they ought presently,
 ‘ by ringing of the Bells, which in *Eng-*
 ‘ *lish* they call *MOTBEL*, to call to-
 ‘ gether all the People, which in *English*
 ‘ is called the *Folk-mote*; that is, the call-
 ‘ ing together, and Assembly of all the
 ‘ People and Countries, because all
 ‘ ought to meet there: and all who live
 ‘ ~~under the~~ Protection, and Peace of
 ‘ our Lord the King, and live in the said
 ‘ Kingdom. And there they ought to
 ‘ take ~~Gar~~ for the Indemnity of the
 ‘ Crown of this Kingdom, by Common-
 ‘ Council. And there Provision is to
 ‘ be made to repress the Insolence of
 ‘ Malefactors, for the good of the King-
 ‘ dom. For, it was enacted, that there
 ‘ all People and Counties should meet,
 every

' every year, once a year, to wit in the
 ' beginning of the Kalends of *May*, and
 ' there to confederate and consolidate
 ' themselves, with an inviolable Oath *sicut con-*
 ' and Faith, as sworn Brethren to defend *jurati fra-*
 ' the Kingdom against Foreigners, and *tres.*
 ' against Enemies, together with their
 ' Lord the King, and to keep his Lands
 ' and Honours with all Faithfulness;
 ' and that they will be faithful to him,
 ' as to their Lord, both within and with-
 ' out the Realm of *Britain*. So ought
 ' all the Princes and Earls to do, and al-
 ' so to swear before the Bishops of the
 ' Kingdom in the Folkmote, and also,
 ' all the Peers of the Kingdom, and the
 ' *Knights and all the Freemen of the whole*
 ' *Kingdom of Britain*, ought, as is afore-
 ' said, to swear Fealty to their Lord the
 ' King, in full Folkmote, before the Bi-
 ' shops of the Kingdom. *And the*
 ' Free-men of the whole *Kingdom*, ought
 ' according to their Faculties and *Swor-*
 ' sessions, and according to their Fee-
 ' and according to their Tenements, to
 ' have Arms, and to keep them always
 ' in Readiness, for the Defence of the
 ' Kingdom, and the Service of their
 ' Lords, to be performed and fulfilled

‘ according to the precept of their Lord
‘ the King.

Here is not that Provision against Exactions, which was afterwards necessary ; but every other point of *William's Grand Charter*, is fully express'd.

They were to be sworn Brethren, for the preservation of the Rights of the Crown, for the keeping the Peace, and the Laws and Customs of the Kingdom, which secured the Interests of private-men, to the *Liberi homines totius Monarchiæ*, there answers the Folkmote, or *Vocatio & Congregatio populorum & gentium omnium*, or *universi qui sub protectione & pace Domini Reges degunt*.

These surely were more than Tenants by *Knights Service*, for they are distinguish'd into *Principes, Comites, Proceres, Milites, & liberi homines universi totius regni*. And 'tis not to be argued, that they were Tenants by *Knights Service*, because they were to defend the Kingdom with Arms, according to their *real and personal Estates*. For, I take it, none ever heard of a Tenant by *Knights Service*, of a *Chatell*.

If our Disputant were as conversant in *Antiquity*, as he pretends, or as faithful

ful as he ought to be, and have left off his Designs, he would have taken notice of the *Assize of Arms*, in Henry the Second's time, which confirms my Sense of the former Laws.

Quicumque habet fœdum unius militis *Hoveden.*
habeat lorica & cassidem & clypeum &
lanceam & omnis miles habeat tot loricas
& cassides, & clypeos et lanceas quot ha-
buerit fœda Militum in Dominico suo qui-
cunque liber laicus habuerit in Catallo, vel in
redditu ad valentiam 16 Marcarum habeat
loricam et cassidem et clypeum et lanceam
quicumque liber laicus habuerit in Catallo ad
valentiam 10 Marcarum habeat halbergel-
lum et capelet ferri et lanceam. Et omnes Bur-
genses et tota communia liberorum hominum
habeant Wanbais et capelet ferri et lanceam:
et unusquisque juret quod infra festum San-
cti Hillarii hæc arma habebit, et domino
Regi, scilicet Henrico, filio Matildis Impe-
ratricis, fidem portabit, et hæc Arma in
suo servitio tenebit secundum præceptum su-
um et ad fidem Domini Regis et Regni sui.
 'Whoever has one Knights Fee, let him
 'have an Habergeon and Buckler and
 'Lance, and let every Knight have so
 'many Habergeons and Bucklers and
 'Lances, as he has Knights Fees in his

K 4

De-

' Demeasn, or under him. Whatever
 ' Free Lay-man has in Chatells, to the
 ' value of fifteen Marks, let him have
 ' an Habergeon and Buckler, and Lance.
 ' Whatever Free Lay-man has in Chat-
 ' ells, to the value of 10 Marks, let him
 ' have an Halbert and Capelet of Iron;
 ' and let all Inhabitants of Towns, Ci-
 ' ties, Burroughs, and all the Commo-
 ' nalty of Free-men, have a Wanbais and
 ' Capelet of Iron, and a Lance: and let
 ' every one swear, that within the Feast
 ' of *St. Hillary*, he will have these Arms,
 ' and will bear Faith to their Leige
 ' King, to wit to *Henry* the Son of *Ma-*
 ' *tildis* the Empress, and will hold these
 ' Arms in *his Service*, according to his
 ' Precept, and for the Defence of their
 ' Lord the King, and his Kingdom.

Good Mr. Dr. Were all those who
 were to bear Arms in the King's Service,
 his Tenants by Knights Service? Agree-
 able to this, one of the Enquirers upon
 the Statute of *Winchesler*, 34 Ed. 1. is,
If they have Weapons in their Houses ac-
cording to the Quality of their Lands and
Goods, for maintenance of the Peace, ac-
cording to the Statute.

Our Author, who has an admirable p. 1.
Faculty of rescuing these *sacred things*,
from groundless and designing Interpretations,
would make the solemn Assembly
in the *Folkmote*, no more than
an ordinary *County Court*, and
is pleased to put a Slight upon
the Authority of the true Sir
Henry Spelman, who rightly
takes it for a *Great Council*.

In Folcmoto semel quotannis sub initio Kalendarum Maii (tanquam in annuo Parlamento) convenere Regni Principes tam Episcopi, quam Magistratus Liberi homines.

And the new convincing Reason for the former Sense, is, because the Court, where Causes were determined before the King's Provost or Officer, is called *Folkmote* too; but, pray why is not this the great *Folkmote*? And why may we not from hence take the Platform of the *Great Councils* in these Times, and consequently, of such as *King William* confirmed, together with the Laws of the Confessor.

Gloſ. tit.
Genistum.

New Gloſ.
P. 19.

Was an ordinary *County Court*, in time of War or Danger, to act as a Council, in providing for the Safety of the Crown and other things, for the profit of the Kingdom? And were the *Bishops* of such a spiritual Nature, that they could animate the whole Kingdom, as the Soul does the Body, and be all at the same time

*Jani Angl.
facies nova.
p. 34.*

time in each distinct County of Eng-
land? This clears, beyond Exception,
the Charter of *Henry the First*, which
provides for the Assembly of the *Counties*
and *Hundreds*.

If he had look'd but a little farther,
de Heretoe, he would have found a *Folk-*
mote that was held twice a year, when
this was but once; and the *Sciremote* di-
stinct from that. The first was the *Sher-*
riffs Tourn, the other, the *County*
Court; and that observed by him, might
have been either the monthly *Sciremote*,
or that *Folkmote* that was held twice a
year. *Ita vero his Folkmote singulis an-*
nis semper celebrari debet per universos Co-
mitatus, &c.

But, to convince him more fully of
the Absurdity of *his Confidence*: He
ought to remember, that the very *Law*
whereby he would prove all the *Free-*
men of the Kingdom to have been *Te-*
nants by Knights Service, was in *Con-*
firmation of the *Confessor's Laws*, and
that granted to those who had lived un-
der them, and knew the Benefit of *de-*
fending themselves and their *Properties* in
the *Great Councils*, and the Nation too,
there, or by their Arms elsewhere, with-
out

out trusting the manage of all, to such
Thayns as held immediately of the King.
 Nor were they then likely to quit their
 former Advantages, when as appears by
 the Story, they were in a probable
 Condition of gaining more, if they
 would: for, the *English* had got toge-
 ther, by the Encouragement of Abbot
Fretherick, *Exercitum numerosum & for-
 tissimum*, a numerous and most potent
 Army: and in their Head, was he who
 was the only *Heir* to the Crown, and
 that a Title above the *Confessor*. Up-
 on this, *Prudentiâ feliciter eruditus*, ha-
 ving the Happiness to follow his Inte-
 rest, and comply with the Occasion,
 he granted *St. Edward's Laws*, with some
 Additions indeed, but not with such as
 would defeat the whole. And I affirm
 it, that though in his Additions he pro-
 vides about the Tenures, or other mat-
 ters of his then or future Tenants, yet
 there is not any thing which creates a
 Feud over the whole Kingdom.

Indeed, the Dr. who understands not,
 for it was beyond his Sphere, that Ser-
 vice laid either by Common or Statute
 Law upon all free Lands, such as before
 the Conquest, and since, the *Burgh-bote*,
 the

Tit. Hon.

the *Bridge-bote*, and the *Expediitio*; the last of which, we have been disputing of, under the Law of Arms, is a *Service* but no *Tenure*, as Mr. *Selden* has rightly shewn, would infer that, because the *Conquerour* in Affirmance of *St. Edward's Laws*, enacts, That they shall for ever, or *Jure hereditario*, enjoy their Lands free from all Manner of Charge, but their free Services, (which indeed, tho it implies not his raising Tenures universally, does not exclude such, as himself had raised) that therefore all were made Feudal Tenants, *Quod restat probandum.*

SECT. 2.

Against
Jan. &c.
P. 47.

FOR King *John's* Charter, If he thinks fit to read over the Book that treats of it, once more, and to observe it well, and compare it with what he hath said, he will find it anticipated and answered; and if he hath not a mighty strong Fancy of his own Abilities, must be ashamed of his impertinent Rhapsodies. Since 'tis there abundantly proved, that though that King's Charter seems to some Understandings, to make express

press provision for the summoning the *Great Council* of the Nation; yet, it expressly provided for the summoning the lesser Council, the more ordinary *Curia Regis* only; the Tenants which were Members of it, standing in need of a Law, to relieve them from some Hardships they were under. Whereas, the constant practise from the Reign of *William* the First, inclusively downwards, evinces, that they who composed the *Great Council*, had maintain'd their Right, *ad habendum commune Concilium regni*, uninterrupted: for a general proof of which, the Authority of *Bracton* was us'd, which shews, that besides such Payments as lay upon the Kings Tenants in *Capite*, or had their Rise from *Custom*, there were other introduc'd by the *Common Consent* of the whole Kingdom; whence 'tis easie to conclude, that King *John's* Charter does not exhibit, that is, particularly set forth the full form of our English great and most general Councils in those days.

Fani, &c.
p 1.

Though there is a general Reference to all the constituent parts of those *August Assemblies*, and to be sure, nothing to prove that Tenants in *Capite* were the only Members of them; yet, what

¶

others

others have thereby Right *ad habendum Commune Consilium Regni*, is not exprest, how strongly soever it may be imply'd from the words, even without the Interpretation of practise. That others had Right, is undeniable, from the words, and 'tis as clear from practise, who those others were, and whether or no all the Members of the great Councils of the Kingdom, or even all such as were Tenants in *Capite*, came to Council in Person, either upon general or special Summons, as such Tenants did to the Conventions, for matters of their Tenure, is not mentioned, but left to that ancient *Course* and *Right*, which the *Practice* or *Fact* explains.

Tho this last be barely of the manner of Summons, yet it shews, that the manner is mentioned only in Relation to the form of an ordinary *Curia Regis*, as I shew the Council of Tenants to have been.

The words upon which our Dispute is, are these;

Mat. Paris
fol. 257.

Nullum Scutagium, vel auxilium, ponam in Regno nostro nisi per Commune Consilium regni nostri, nisi ad Corpus nostrum redimendum, & ad primogenitum filium nostrum militem faciendum, & ad primogenitam filiam nostram semel maritandam.
Et

Et ad hoc non fiet nisi rationabile auxilium. Simili modo fiat de auxiliis de Civitate Londinensi & Civitas Londoniensis, habeat omnes antiquas Libertates & Liberas consuetudines suas tam per terras quam per aquas. Præterea volumus & concedimus quod omnes aliæ Civitates, & Burghi, & Ville, & Barones de quinque portibus, & omnes portus habeant omnes Libertates, & omnes liberas consuetudines suas, & ad habendum Commune Concilium Regni de auxiliis assidendis, aliter quam in Tribus casibus prædictis: & de Scutagiis assidendis submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites, & majores Barones Regni sigillatim per literas nostras, & præterea faciemus submoneri in generali per Vicecomites & Ballivos nostras, omnes alios qui in Capite tenent de nobis, ad certum diem scilicet ad terminum quadraginta dierum ad minus, & ad certum locum in omnibus literis submonitionis illius causam submonitionis illius exponemus, & sic factâ submonitione negotium procedat ad diem assignatum, secundum Consilium eorum qui præsentés fuerint quamvis non omnes submoniti venerint.

My Inference from hence, as I find
Et de Scutagiis assidendis, divided

Against
Jani &c.
P. 3.

vided in a distinct period from what went before; the Dr. how foul soever his Reflection of *New-face-Maker* is, has render'd not unfairly; viz. *That the City of London, all Cities, Burgs, Parishes, or Townships, that is the Villani, their Inhabitants, the Baroons or Free-men of the five Ports, and all Ports should amongst other free Customs enjoy their Right of being of, or constituting the Common Council of the Kingdom.*

Against
Jani &c.
P. 60.

2 part of
the Glos.

And that this reading, and my Deductions from it, are not so far remote from Reason and Sense, that no man but myself could ever have thought of them, appears, in that he, or they who *Mid-wiv'd* — into the *World* the *spurious Glossary*, use some *Artifice*, to keep them who have not read this Charter, from falling upon this *easy* way of answering the Doctor's whole Book; and therefore they castrate the Charter, and leave out all the provision for the *Liberties* and *free Customs* of the several integral parts of the Kingdom, as if their imaginary *General Council*, had swallowed up the *Liberties* and *Freedoms* of all them who held not of the King, as of his *Crown*, or in *Chief*; and this some would

Nota, A
Tenure in
capite is
when the Land is
not holden of the King,
as of any Honor Castle or
Mannor, &c. But of the King as of the Crown.

would rather have effected, than that the Commons of *England* should be thought to have had any Right affirm'd by so ancient a Law, and that this was apprehended when the *marvellous Discoveries* worthy to be inquired into, under Title Parliament, Bless'd, the World, may well be gather'd from the printing *only as much* of that part of the Charter, which is now in Debate, *as in* the Publisher's own Judgment, he thought would *fit his Purpose*, concealing the rest. In that Glossary, there is no more than this; *Nullum Scutagium, vel Auxilium ponam in regno nostro nisi per Commune Concilium Regni nostri.* 1. *Nisi ad corpus nostrum redimendum.* 2. *Ad primogenitum filium nostrum Militem faciendum.* 3. *& ad primogenitam filiam nostram semel maritandam, & ad hoc non fiat nisi rationabile auxilium.* Et ad habendum Commune Consilium Regni, *de auxiliis assidendis (aliter quam in tribus Casibus prædictis) et de Scutagiis assiden-* dis, *summoneri faciemus Archiepiscopos, Abbates, Comites & Majores Barones sigillatim per literas nostras, & præterea faciemus summoneri in generali, per Vicecomites & Ballivos nostros, omnes alios qui in Capite tenent de nobis, ad certum diem,* § *ili-*

Spelman's
2 part of
the Glossary,
Tit. Parliamentum.

If but one
had an
hand in it.

Spelm.
Gloss. Col.
452.

Nota, the
Omission
here.

cet ad terminum quadraginta dierum ad minus, & ad certum locum in omnibus literis submonitionis illius, causam summonitionis illius exponemus; Et sic factâ summonitione, negotium procedat ad diem assignatum, secundum Concilium eorum qui præsentes fuerint, quamvis non omnes summoniti venerint.

By the partial citation of this *shred* or *end* of the *Charter*, 'tis a clear case, that **Et ad habendum Commune Concilium Regni** is there, in exprefs words appropriated to Tenants in *Capite*, whatever may have been reserv'd to others in the general provision for all their *Liberties* and free *Customes*; and the Publisher hath so dexterously and effectually patched the Fragments together, that the Reader must be forced, according to those curious Appearances, to assent to the Publisher, and Doctor's fallacious Assertions, that none but the Tenants in *Capite* made the **Commune Concilium Regni**, the City of *London*, and all other Cities, Burroughs, Ports and Towns, or Parishes, (whose Rights are there reserved) being clearly left out in the *Glossary*; whereas, 'twill be very difficult to one that reads the whole together, not to think

think that, admitting *ad habendum Commune Consilium Regni*, be there appropriated to the Kings Tenants in Chief, yet the *Aid* and *Escuage* they are empower'd to assess, must be such as concern'd them onely. A reservation for the *Liberties* and *free Customs* of all the parts of the Kingdom, following immediately upon mention of the *Common Council of the Kingdom*, which, undoubtedly had, of *Right* and *Custom*, a larger Power, than barely the granting of *Taxes*. But, if *Et ad habendum Commune Concilium Regni de auxiliis assidendis, aliter quam in tribus casibus predictis*, ought to be joyn'd to the *Liberties* and *free Customs* of the whole Nation, reserved by King *John's* Charter, then that darling *Notion* of a *Parliament* of the King's Tenants only, (no more to be prov'd than that we had *Parliaments of Women* as well as others) falls to the ground. vid. Jan. P. 239.

And, by the Dr's good favour, there was no need of proving, that, amongst the other Customs of the Cities, Burroughs, &c. this of enjoying a *Right of* Against being of, or constituting the *Common Council* Jan. p. 4. of the Kingdom was one of them, any otherwise than from the express words

of the Charter: nor could I justly be blam'd, for not going first to prove that such were *Members*, before my saying, that if they were so before, and, at the making of the Charter their Right is preserv'd to them by it, and is confirm'd by the Charter of H. 3. c. 9. Since in all mens Logick, but the Dr's, the Argument is to be laid down before it can be made good, and the thing to be prov'd here is but the *minor* of a *Syllogism*.

p. 1.

Which Argument being founded upon *Fact*, which the Dr. would have to be the *onely Controversie between us*, I may wave for a while, and yet there's no doubt but I prove a *Right*, if I shew, that amongst other *Liberties* and *free Customs*, all parts of the Kingdom here enumerated, were, by the Words of King John's Charter, to enjoy a *Right ad habendum Commune Concilium Regni*.

So Matth.
Paris.
Against
Jan. &c.
p. 62.

The Dr. agrees, that King John's Charter, and that which H. 3. granted in the 9th of his Reign, were alike in all things.

Wherefore, if I can shew the *likeness*, I hope 'twill qualifie and abate our Author's great *Wrath*, for my proving from thence a provision for a more *General Council*, than one made up of *Tenants onely*.
For,

For, being *like*, 'tis not necessary that p. 63.
 the Words should be the *very same*, but
 the *Sense*; and, if we are sure by *Record*
 that we have the right *words*, we are
 certain, if *Records* may explain *Matthew*
Paris, that the *likeness* he meant consist-
 ed in the *Sense*. Since therefore, in the
 Great Charter granted 9 H. 3. (as I find
 also one in *Secundo*) there is in a Chap-
 ter intire by it self, as the *Lord Cook* cites
 it, *Scutagium de cætero capiatur sicut*
capi consuevit tempore H. avi nostri, and
 no other provision is in any part of the
 Charter made for the *Great Council* of
 the Nation, than what is contain'd un-
 der the *Liberties* and *free Customs* of eve-
 ry particular Place; and yet this whol-
 ly agrees with, and expresse the *Sense*
 of King *John's*. *Et de Scutagiis assen-*
dendis must be disjoyned from *ad*
habendum Commune Concilium
Regni, aliter quam in tribus casibus præ-
dictis.

The hand-
 writing of
 E. MS. pe-
 ues Dom.
 Petyt.

And if so, then the Tenants in *Capite*,
 who are under that Division, have no
 expresse provision there made for their
 Summons to the *Great Council* of the
 Nation, but are, with others, left for
 that to the antient Law, as it was in the
 time of H. 2. whose Laws, both Char-
 ters,

ters, that were in *nullo dissimiles*, reinforced.

Mat. Paris
ed. Tiguri
f. 305.

And the Charter 9 H. 3. being after a strict Inquisition concerning the Liberties which were in *England* in the time of King H. that King's Grandfather; it appears, that the Tenants in *Capite* had neither in the time of H. 2. nor at any time after, *Right* to impose any *Tax* besides *Escuage* only, for the taxing of which, they were to have *Summons*, as is express'd and provided for by King *John's* Charter, and if both Charters were in every thing alike, was the *Custom* in the time of H. 2.

Vid. the
Additions.

And though some of the Arguments in my Book may drive at their being a *Council* for *Tallage* too, yet 'tis only upon the Advantage is given me from the Dr's making the Tenants a *Council* for all manner of *Aid*, as well as *Escuage*.

This great *Antiquary* keeps a pother to make us believe that the Records of H. the Third's Charter are of no credit, compar'd with his interpretation of *Matth. Paris* : and in answer to the Conviction from the manner in which the Charter of H. 3. expresses the *same thing* with that of King *John's*, tells us magi-
ste-

terially, that the Great Charter commonly attributed to H. 3. was none of his, but properly the Charter of E. 1. But when he says it was rather his Explication or Enlargement of that Charter of King John and Henry 3. He, by an unlucky dash with his pen, hath spoil'd all, and yields the Cause, granting that *Et de Scutagiis assidendis* ought, according to the meaning of King John's Charter, to be divided; and in another Clause, from *Et ad habendum Commune Concilium Regni*, and consequently, that the Common Council of the Kingdom consisted of more than Tenants in Capite. p. 63.

If, as the Dr. contends, There is no provision made for any Summons to Great Councils, or Parliaments, in the Charter confirm'd 25 E. 1. And yet that Charter, as appears by Record, is word for word the same with that which was granted 9 H. 3. and the Charters of H. 3. and King John, were not found to disagree in any thing, then there was no Provision made in King John's Charter, for any Summons to Great Councils, or Parliaments; no, not so much as a general Provision, which I yield. And if he will have it, that the Charter of E. 1. was most properly his Explication, or Enlargement of that Charter of King John, and Against Jan. &c. p. 64.
H. 3.

Nota, The provision for raising Escuage is no less general in the Charters of H. 3. and E. 1.

H. 3. Does he not therein yield, that there was provision made for Summons to *Great Councils*, in the providing for all the *Liberties* and *Free Customs* of particular places: and if *ad habendum Commune Concilium Regni*, be taken in King *John's* Charter, as joyn'd with the *Customs*, in the several parts of the Kingdom, and so that of *being of, or constituting the great Council*, is express among other their *Liberties* and *free Customs*, The Charter of *Ed. 1.* may well be taken for an *Explication* of the Charter of King *John*, and if it were doubtful, what King *John's* Charter meant by the *Commune Concilium Regni*, the other makes it undeniable, that no other Common Council is meant in King *John's* but such as was provided for, by the Reservation of the *Liberties*, and *free Customs* even of every Parish; and, as *Generals* include particulars, tho the Charter of H. 3. and E. 1. have not the Right *ad habendum Commune Concilium Regni*, express'd, yet they do not in any thing disagree from King *John's*. Whereas, if the *Council*, which according to the Charters of H. 3. and E. 1. and the practise in the time of H. 2. was to raise *Escuage*, was the only *Common Council* of
the

the *Kingdom*, intended by King *John's* Charter. 'Tis evident, that there was a Disagreement between the Charters, for there is no provision in general, or particular, for any such *Common Council of the Kingdom*; for particular provision, there can be no pretence, and the same general expressions which affect them, take in others with them, unless they were the only men that had *Liberties* and *free Customs* in any part of the Kingdom, even as late as 25 *E. 1.* which is so ridiculous a *Whimsy*, that it deserves no answer, tho' it be patroniz'd by the Dr. who supposes, that Tenants in *Military Service*, and they, to serve his Turn, must be all Tenants in *Capite*, were the *only Free-men of the Kingdom*, till 49 *H. 3.* But it seems, others had then a general Enfranchisement procur'd by the successful Barons, *An. 49 H. 3.* to lessen their own Power.

Against
Mr. Petyt.
p. 39.

'Tis particularly to be observed, that this so mistaken and controverted part in King *John's* Charter, concerning the Summons of all the Tenants in *Capite*, was not only left out in the *Magna Charta*, confirm'd in Parliament, 2 *H. 3.* which was but 3 years after the making of King *John's* Charter; and in the *Magna Charta*, confirm'd 9 *H. 3.* which was but ten years after the making of King *John's*

MS. Penes
dominum
Marsham:

John's; but likewise, in the Confirmation of the Charter, *An. 37.* of that King *Henry*, as appears by the Legier book of the Priory of *Coventry*, in the hands of that greatly learned Gentleman, *John Marsham Esq;* but also, there is not a word of it in the *Magna Charta*, confirm'd 25 *E. 1.* which the Dr. yields to be an *Explication* of King *John's*: and instead thereof; whereas, the assessing of *Escuage* was mentioned about the middle of King *John's* Charter; in those Charters of *H. 3.* and *E. 1.* there is a particular and distinct Chapter, *viz. 37.* concerning *Escuage*, and that the very last, except the saving and reserving to the Archbishops, Bishops, Abbots, Priors, Templars, Hospitalers, Earls, Barons, and all others, as well Ecclesiastical as Secular persons, all their Liberties and free Customs, which before they had.

But, as to the way of raising *Escuage* in an especial manner, it is refer'd to the ancient course of Law, as 'twas in the time of *H. 2.* whose Laws in general, were then intended to be confirm'd. I cannot but make a farther Remark, taking in that evidence of *Fact*, which for a while I laid by, that in all those Charters since King *John's*, upon the several Confirmations, the Arch-bishops, Bishops, Abbots, Priors, Earls,

Earls, Barons, Knights, Free-holders, and all of the Kingdom, are mention'd, as granting to the Crown, a 15th of all their moveable Goods, and these that granted the Subsidy, in the old Register of Writs, an Authority uncontrollable, are called *Commune Concilium Regni*. Register
f. 175.

Wherefore, 'tis impossible for any man of Reason, that considers, to fancy that King John's Charter, in the sense of the Dr. and others, could exhibit the full form of the Common Councils of the Kingdom or Parliaments, till 49 H. 3.

Take my sense of the Council, which way soever you read it, under the *Liberties* and *free Customs*, will be comprehended their whole Interest in the *Legislature*; whereas otherwise, according to this Charter of all their *Liberties*, the King's *Great Council* had then only Power to raise *Taxes*, though we find, that all along they advis'd *de arduis negotiis regni*, and consented to what passed into a Law.

Wherefore, 'tis strange there should not have been the same care taken that they might have their Rights in Council settled, as well as their *Summons* to it: but if this Charter settled no other Right than this of granting *Taxes*, *Quere*, What other power the *Great Councils* have now, by our Author's Principles Against
Jan. &c.
P. 13.

ciples? For, admit that by the *New Government*, which, he says, *was fram'd and set up* in the 49th of *Hen. 3.* a *Right* of coming to the *Great Council*, was giv'n to a body of men, who before that had none; yet there was no additional power given to the *Council* it self, that he or any man can shew.

Because I would encounter the whole Force which they raise by colour of this Charter, I address'd my self chiefly to the proving, that, admitting that *Et ad habendum commune consilium Regni aliter quam*, ought to be joyn'd, as of the same period with *de Scutagiis assidendis*, 'twill not make for the purpose of them that urge it, being, upon strict Inquiry, it cannot be thought to extend farther than to such matters as concern'd Tenants in *Chief* only.

That this must be thus confin'd, is prov'd.

(I.) Because there were *Majores Barones*, not excluded by this Charter, and so their ancient *Right* continued, tho they are not within the meaning of that part he insists upon; for this is only of Tenants in *Capite*, that is, such as were subject to the *Feudal Law*. The Earl of *Chester* for instance, was not under it as Earl of *Chester*. *Wardship* was a necessary Appendix to that Tenure; but, even the *Tenants* within that *County*, though

though holding other Lands of the King by *Knights Service*, were however out of the King's Wardship, much more the *Court Palatine*. And surely, no body before the Dr. ever took him for a *Feudal Tenant*, by reason of the County of *Chester*, though he might be oblig'd to attend in the Wars, and pay Escuage in case of Failure, for other Lands held in *Chief*, in other Counties.

(2.) There were others came, and upon other occasions than what are here mentioned, as *Falcatus de Brent*, who was to come even without forty days notice, which was required in the Case here; and whereas, giving Advice in great Affairs, and the making of Laws, were transacted in the *Great Councils*, no such thing is mention'd in this.

(3.) We have the Resolution of a whole Parliament, the 40th of *Ed. 3.* That the *Common Council* of the Kingdom, of Tenants in *Chief*, was not the *Great Council* of the Kingdom; for that King *John* resigned his Crown in the first *Council*, but as they declare, not in the last: and this the very Circumstances, attending the Resignation, evince.

L

(4.)

(4.) If the opposite Doctrine be true, then all the *dignified* and *inferiour* Clergy, which did not hold in *Capite*, *Abbots*, *Priors*, &c. were excluded.

(5.) This must needs be no more than a *Common Council* of the Kingdom, for assessing *Escuage*, and such other *Aid* as lay upon Tenants in *Capite* only; because, Tenants only, stood in need of *Relief* from this Charter, they only being concerned in the three things *reserved* to the King, or in the Additions to them, none other being charged in that kind, without *more general Consent*, and more than Tenants being Parties to the Grant. Besides, not only the advances upon Tenants Services, but the ordinary Incidents were called *Auxilia*, as well as those others, which according to *Bracton*, were not called Services, nor came from Custom; but were only in case of Necessity, or when the King met his People, as Hydage, Corage, and Carvage, and many other things, brought in by the common Consent of the whole Kingdom.

Now, where the King reserves Incidents to Tenure only, 'tis to be supposed, that the Reservation is out of the thing before mentioned, and so that must

must be Services because of Tenure, none but Tenants being named; whereas, when others are named, we may well suppose the *Aids* given by others too, to be intended.

(6.) We may here divide the benefit to each sort of Tenant in particular.

1. As the Tenants by *Socage* Tenure only, were *talliable*, and that us'd to be without their own Consent: here they have a Consent given them.

2. As Tenants by *Knights Service*, though not *talliable*, yet had hardship in the Obligation to sudden Attendance, convenient Notice is given, and it should seem, that the want of this for the assessing of *Escuage*, was their only grievance proper to be redrest; for their Attendance in the Wars, was to be govern'd by Necessity; and, as a Court of Justice, there was no need of them.

(7.) There is a Difference to be observed all along, between the *Great Council*, and such an one as is mentioned in this Charter 1. For the Persons composing the one and the other. 2. The matters of which they treated. And 3. the times of holding them.

For the *Great Councils*, by his own way of arguing, there was at least one *Great Council*, in the Reign of *William the First*, where, were more than Tenants in *Chief*. The Tenants in *Chief*, he supposes to have been only the *Normans* and *Foreigners*; who were Enemies to the *English Laws*, and the only great men by his Rule; wherefore, if the *English Laws* were retained at the Petition of any great body of men here, they must be *populus, inferiour People* of England.

Jani Anglorum facies nova.
p. 55.

This was, *Ad preces Communitatis Anglorum, Universi compatriotæ regni petition'd*, as appears in the very Body of the Laws, then received: but these, as despicable as they were, had got together a numerous and mighty Army, of which, they made *Edgar Etheling* General; these are all called *Primates*, *mitius cæpit agere cum primatibus regni*. To shew that 'twas matter of Council, 'twas argued *Pro* and *Con* at *Berkhamsted*, where, *post multas disceptationes*, after many Disputes, the *English Laws* were settled.

Selden. ad ead.
fo. 171.

I need urge no more in this Reign, except that which he hath yielded to my

my hand, in effect, *viz.* that all the *Free-holders* of the several *Counties* of *England*, met this King in a *Great Council* at *Salisbury*. For, he himself tells us, that all the *Free-men* of the Kingdom, held by *Knights Service*, and here were all the *Knights*; so more than *Tenants in Capite*, and all the *Free-holders* too, as they were *Knights*, all holding by *Military Service*.

But, if there were other *Freemen*, such as held in *Free and common Socage*, *qui militare servitium debebant*, who ow'd *Military Service* for the defence of the Kingdom, though they held not by it, why were not these *Knights*, as well as the others, since *Tenure* did not alter the *Condition* of the Person? Especially, some of the Chief must have been such, with much more Reason, to be sure, than the Chief *Knights* under *Tenants in Capite*, came to the *Great Councils*, or had other *Liberties*, by vertue of that Law, which he supposes to have related only to *Tenants in Capite*. Does he answer the Law of *William the First*, which it seems, was my idle Invention, of Common *Free-holders* being made *Milites* in the County Court, by the

Glos. p. 10.

Jan. p. 47.

Sheriffs delivering them free Arms, in *pleno Commitatu*? But, what says he to the *Records* and *Statute*, cited to prove that all the *Free-men* of the County were *Knights*? He has not so much as told us, the Argument is *unintelligible*; but he thinks he has me upon the Hip, for appropriating the *Milites* to the *Sheriffs*, *Knights*, since the *Earls* and *Barons* had their *Knights*, and 'tis *Milites illorum*: but, admit they had, the *Sheriff* was their proper *Leader*. Indeed, if the *Summons* had been to the War, every *Tenant* in *Chief* must have produc'd his *Quota* of *Knights*. Besides, though 'tis *Milites illorum*, and others besides *Sheriffs* were there, yet 'twas before seemingly limited, *Barones & Vicecomites cum suis Militibus*, and then, *Milites illorum* must be in the same Sence. But, we are told, that the *Sheriffs* were some of them great men, *Pares Comitum*, with *Knights* under them; but, he does not vouchsafe to take notice, that I before obviated this by the Observation, that then the *Sheriffs* would have been there as *Barons*, or it may be, as *Earls*, if they were properly *Earls Peers*, as we are taught.

Jan. p. 50.

In

In one, if not both of these Councils, were all they that came to the grand *Folkmote*, in the time of the *Confessor*. By the like Council, *William* the Second william 2. was chose *Consilio & Rogatu principum suorum, cleri quoque & populi petitione, & electione.* Jani &c. p. 57.

In this Reign, we find at Council, *Jani &c. Proceres & conglobata, & coadunata multitudo, totius Regni adunatio;* and the Laws pass'd by the Consent of the Multitude. *Adquievit multitudo omnis, unde cum omnes silentio pressi continuissent, statutum est.* ib. p. 60.

In the Reign of *Henry* the First, *Nobilitas populusque minor,* were assembled at Council. ib. p. 224. H. 1.

In King *Stephen's* time, even the *sicut proceres, Traders, Nobility* only by reputation, were at Council, besides all the *Barons.* Stephen. p. 66. & 67.

At the Council at *Clarendon*, in the 11 of *Hen. 2.* were *Prelati, Proceres, & populus regni,* or, the *Body of the Realm.* ib. p. 185. & 186. Hen. 2.

In the 15th of King *John*, we find summon'd to a Great Council, all that owed Knights Service, the *Fendal Tenants*: besides these, the *Barons* and four *Knights* for every County; which two p. 230. & 231.

last bodies of men could not have been such by their Tenure, because they were distinguish'd from such.

Hen. 3.

In the 30th of Hen. 3. we find summon'd, all the Tenants in Capite, and two for every County, to answer for all the Free-holders, *Vice omnium & singulorum*. The Prior of Coventry pleads, that besides the Services of Tenants, there were even in this time, certain Subsidies *per magnates & communitatem regni spontanea & merâ voluntate Regi concessa, & tam de tenentibus aliorum, quam de ten' de Domino Rege levanda*.

Jan. &c.
p. 244.

p. 236.

Whatever might have been the Sense of *vetus, & novum feoffamentum*, at some times, as by Bracton we find *novum feoffamentum* barely, as in Relation to the time before the reputed Conquest. *Sunt & alia genera hominum in Maneriis & Dominicis Domini Regis, qui sicut alibi, tenent liberè & in libero Socagio, & per Servitium Militare ex novo Feoffamento, & post Conquestum*. " There are also, " other kinds of men in our Lord the " King's Mannors and Demeasns, who, " as elsewhere, hold freely, and in free " Socage, and by Knights Service from " the new Feoffment, and that since the " Conquest. Yet

Bracton,
lib. I. c. II.

Yet, in the Reign of *Henry* the Third, we find the *Vetus*, to be that according to which the King's Tenant was to answer for the number of *Knights Services*; the *Novum*, what was raised to his own Use: and therefore, when a man is charged for two *Knights Fees*, he pleads, that he had but one, *de veteri Feoffamento*. Jan. &c.
P. 237.

We find farther, that the Tenants could only charge themselves, or those that were to answer for the Service to the King in their stead, not the *Novum Feoffamentum*. P. 238.
239.

Hic labor, hoc opus est. Upon this, he belabours me with Reflections, and cramping Interrogatories.

The Reflections are these. 1. *That according to constant Practice, I recite only as much of the Record, which I produce to settle my Notion, as in my own Judgment, I think fits my Purpose, and conceal the rest.* 2. *That I am a Plagiary of this Notion, for that it was another Gentleman's, that I conceal that too.* p. 76.

To both which, I plead, not guilty. For, as I shall shew, what I left out of the Record, was no Concealment, there being nothing in it, which can make
against

against me. My own Inspection of the *Record*, occasioned this Notion, which I borrowed from no man; not that I speak this out of Vanity and Ostentation, but to shew the Freedom of this Gentleman's Censure, which out-runs his *Wit* and his *Knowledge*. His *Wit*, for if I borrowed this of another, and was a Stranger to the *Record*, as he would insinuate, more than once; if there were any material part left out; how does it appear, that I was guilty of the Concealment? And he not knowing *the Author*, as he tells a noble Peer, could not tell what Notions, not taken out of other Authors, were my own, what Mr. *Petyt's*; since 'twas impossible, that I, or the Gentleman, who is to bear the burthen of them, should have told him, he being equally a Stranger to both of us.

Letter to
the Earl
of S.

But the main Question is, whether I, or my Instructor, did fairly, in citing no more than thus much of the *Record*;

Claus. 19.
H. 3. m. 6.
dorjo.

Rex Vicecomiti Somersete salutem, scias quod Comites, Barones, et omnes alii de toto Regno nostro Angliæ, spontaneâ voluntate suâ, et sine consuetudine, concesserunt nobis efficax auxilium ad magna negotia

gotia nostra expediendum, unde provisum est de Consilio illorum, quod habeamus de singulis feodis Militum, quod de nobis tenent in in Capite, & de Wardis tam de novo Feoffamento, quam de veteri, duas marcas.

Now, so it falls out, that I unluckily had affirmed, that when there was a Grant which reach'd to the Tenants de novo Feoffamento, the Record mentioning that, shews us, that more than the King's immediate Tenants, were Parties to the Grant; but that other Records shew, that Tenants in Capite, granted by themselves, a Charge upon the *Vetus Feoffamentum* only. Jani &c. p. 239.

But let us see whether that part I omitted, shew any thing to the contrary. *Ad auxilium prædictum nobis faciendum unde providerunt reddere nobis unam medietatem ad festum Sancti Mich. anno 19 & 20. providerunt etiam quod prædictum Scutagium colligatur per manus Ballivorum suorum in singulis Comitatibus & tradatur per manus eorundem duobus Militibus, quos ad hoc assignaverint in singulis Comitatibus, deferendum ad Scaccarium nostrum Lond. & liberandum ibidem Thes. & Camerariis nostris, & ideo tibi precipimus*

Here is no more than a Certificate of their names that would not pay freely; the said Knights could not distress, but the Sheriff.

mus, quòd ad mandatum Comitum, & Baronum, & omnium aliorum, qui de nobis tenent in Capite, in Ballivâ prædictâ, modo prædicto, sine dilatione distingas omnes Milites, & libere tenentes qui de eis tenent per servitium militare, in Ballivâ tuâ ad reddendum Ballivis suis de singulis feodis & wardis, duas Marcas & prædictum auxilium nobis faciendum in terminis prædictis, tolerandum Johanni de Aure, & Henr. de Meriet, quos ad hoc assignavimus in Comitatu tuo sicut prædictum est, &c.

You must understand, that two Marks being granted upon every Knights Fee, for an effectual Aid, the not going as far as *ad auxilium prædictum faciendum*. after the mention of the *efficax Auxilium*, and what was granted, was a designing Omission.

But to the Questions.

Against
Jani Angl.
&c. p. 77.

Who were charged in this Writ, two Marks for every Knight's Fee, that was holden in Capite, as well of the new Feoffment, as of the old, but the Tenants in Capite? To whom is the novum Feoffamentum affixed, but the Tenants in Capite?

To

To which, I answer, That as the Charge lay upon all that was first granted out in *Capite*, it was upon more than Tenants in *Capite*, because of their Alienations; nay, and he himself should have put the Question of more, otherwise, their Tenants were not charged: but 'twill be said, that what was in the hands of Tenants, was the Lord's own. What need then was there for the Sheriff to distrain, without which the Lord could not raise it by his Bailiff?

But, what Answer has he made to the *Record*, in the very year in which he supposes a Charge was laid by the Tenants in *Capite*, upon all their Tenants, that shews, that both the King and Lords could not charge the Lords Tenants, though to relieve the Necessities of the Tenant in *Capite*? What says he to the Plea, according to which, the *novum Feoffamentum* is allowed to be free, where the *Vetus* was chargeable. Whereas, he would have it, that *Omnes alii de regno*, were only *qui de nobis tenent in Capite*; How comes it to pass, that where the *novum Feoffamentum* is expressly nam'd to be charged, there *omnes alii* are particularly named; otherwise, only Tenants in *Capite*? Jan. &c.
p. 237.

ib. p. 238.
& 239.

And

Against
Mr. Petyt.
p. 193.
and 196.

And what says he to the *Record*, which out of marvellous Modesty, he owns himself not to have *so much Knowledge of the Practice of the Law*, as to say that he understood. And yet in a few pages after, forgetting himself, pretends to know that Mr. Petyt understood not the latter part of the *Plea*? Which he would have to be, that only two *Knights Fees* were in the *Possession of the Prior and Convent*, &c. Whereas, according to his Notion that it was not regarded in the Levy, what Fees were answerable to the King, according to the Original Grant, whether in the hands of the Tenants in Chief, or their *Subfeudatories*; the Payment was by this *Record*, to be forc'd only from those Lands, which were out of their *Possession*. *Ideo &c. distringas omnes milites & liberè tenentes qui de eis tenent per Servitium Militare*, &c. then besides, if the King might *distrain in the Fees of the Subfeudatories*, without Parliamentary Grant, what a ridiculous thing was it, for the Prior of *Coventry* to plead in discharge of eight parts of ten, that eight parts were out of his *Possession*? But his *Plea* is, that he was not liable to so many as Tenent in *Capite*; but in effect, that

Against
Mr. Petyt.
p. 176.

that indeed he had so many held under him, who paid their Proportions by his hands, as Collector for the King, under the Sheriff, who accounted for them, but such were not chargeable, as having any respect to Service or

Tenure. *Auxilia illa non fuerunt nec censi possunt esse servitia, imo subsidia per Magnates et Communitatem Regni spontanea et mera voluntate Regi concessa, et tam de tenentibus aliorum quam de tenentibus de Domino Rege in Capite levanda.*

And this is manifestly the same, as if he had pleaded, that he had eight of the *Knights Fees, de novo Feoffamento*, and therefore was not chargeable for them.

For, it appears, that in the 34th he was to account for twelve Marks, *Ad Sororem Regis maritandum*; (this, there being then charged two Marks upon every *Knights Fee*, was for Arrears in his hand) the very charge was, *Tam de novo Feoffamento quam de veteri*, expressly:

and that, per *Commune Consilium Regni*, or as he pleads, per *Magnates et Communitatem Regni. Quia per Commune Concilium regni fuit Regi concessum auxilium ad sororem, &c. 2 Marca de singulis feodis mili-*

See the Record at large, in Mr. Petyt's Appendix, or *inter Communia de Terminis Sancti Hill, Anno 17. Ed. 3.*

Vide the Record.

Communia de Terminis Sancti Mich. anno 34. H. 3.

militum tam de novo Feoffamento quam de veteri, &c.

Rot. Pat.
24 Ed. 1.
n. 22. de
12. & 8.
Regi con-
cessa.

But, as our Author supposes all manner of Charges to have been laid by the *Tenants in Chief* only, who were able to charge more than such, for whose Services they were answerable to the King, what thinks he of the *Record*, 24 *Ed.* 1. which says, that a twelfth and eighth were granted to the King by the *Comites, Barones, Milites et alii de regno* (when to be sure, more than *Tenants* by *Knights Service* gave, it being after the Doctor's *marvellous* year, 49 *H.* 3. and more are specified) *as it us'd to be in the time of the Kings Progenitors*; which must be beyond the Reign of *H.* 3. to which, at present, our Dispute is limited? *Cum Comites, Barones, Milites, et alii de regno nostro, in subsidium guerræ nostræ, sicut alias nobis et progenitoribus nostris regibus Angliæ, concesserunt &c.*

If all these will not do, however, I have one *Record*, which is a Demonstration, that no more than such as the *Tenants in Capite*, were answerable for, according to the *Vetus Feoffamentum*, or original Infeodation from the King,
were

were in respect of any charge, to be laid by Tenants in *Chief* only, accounted their Knights. Though I have a great Example before me, for long-winded Quotations, yet, I cannot cite more of the *Record*, than is to the purpose: some-
 times indeed I may omit some part, which would corroborate my Assertion.

*Vid. Jani
&c. p.
239.*

Cum peteremus à Prælatiſ Angliæ, quod nobis auxilium facerent pro magnâ neceſſitate noſtra de quâ eiſ conſtabat, viz. Epiſc. Abbatibus, Abbiſſiſ, Prioribus, & Prioriſſiſ, qui de nobiſ tenent in Capite, ipſi nobiſ liberaliter conceſſerunt auxilium tale, viz. de ſinguliſ feodiſ militum ſuorum 40. s. de tot feodiſ de quot ipſi tenentur nobiſ reſpondere quando nobiſ faciunt ſervitium militare, & noiſ conceſſimus eiſdem Prælatiſ, quod ad prædictum auxilium nobiſ faciendum habeant de ſinguliſ feodiſ militum qui de eiſ tenent 40. s.

*Rot. Pat.
15 H. 3.
M. 3. De
prælatorum
Angliæ.*

Before I enforce this Record, I muſt wipe off one Reflection, as if I made a Parliament of Women, amongſt others, by my note of *Women granting*; whereas, if they granted by their *Dapifer*, or *Magiſtraliſ ſerviens*, 'twas the ſame, as by ſuch they might be Judges in the Counties and Hundred Courts, accord-

*Jani &c;
p. 239.*

ing to a Charter of King Stephen ; an ancient Transcript of which I have seen, whereby such Liberty was granted to the Church of Saint Milburg de Wunelort, and to the Monks there; and with the same Propriety might have been to an Abbateſs or Priořeſs, if the Society *deo ſerviens*, were female.

Carta Regis Stephani.

Carta Regis Stephani, de liberat. anno 3º.

Rex Angliæ Archiepiſc. Episc. Abbatibus, Comitibus, Juſticiariis, Baronibus, Vicecomitibus, Miniſtris, & omnibus fidelibus ſuis Francis & Anglis totius Angliæ, Salutem. Sciatis quum pro dei amore animabus patrum & parentum meorum, & ſpecial. Regis Henr. Domini & Avunculi mei, & pro ſalute meâ, & uxoris, & fratrum, & filiorum meorum, & pro ſtatu, & incolumitate regni mei, dedi & conceſſi in perpetuam elemoſinam deo, & Eccleſiæ Sanctæ Milburge de Wunleloch, & Monachis, de caritate meâ, deo ſervientibus, hanc ſubſcriptam libertatem ; ſcilicet, quod Eccleſia ipſa pro ſe, & pro omnibus hominibus ſuis Sanctæ Milburge, mittet Dapiſerum ſuum, vel Magiſtralem ſervientem ſuum ad nominatos Comitatus & Hundred. mea, qui ibi audiat precepta mea, & cum aliis juditia mea indicet, ita quod nemo hominum ſuorum ſuper hoc illuc eat neque

ibi

ibi respondeat nisi specialiter de aliquo placito sic appellat. quod ad Coronam meam pertineat, de nullis verò aliis Placitis illuc eat, vel ibi respondeat, nisi prior Ecclesie prius in Curiâ suâ se inde de recto defecerit, Et hanc prædictam libertatem & omnium rerum quietantiam eis concedo, exceptis placitis superius annotatis, et ut hæc libertatis meæ donatio Ecclesie illi in perpetuum integrum conservetur presentis sigilli mei impressione ipsam confirmo, et subscriptorum attestatione corroboro, et præter hæc omnia suprædicta concedo eis quod habeant unam feriam apud Wuneloch ad Festum Sancti Johannis Baptiste, per tres dies durand. a vigiliâ Sancti Johannis singulis annis: et volo, et firmiter præcipio, quod omnes homines ad feriam illam venientes, in-eundum et redeundum, et ibi manendum, ipsi et omnia sua meam firmam pacem habeant, ne super hoc in aliquo injustè disturbentur super 10. l. forisfact. Testibus R. Episcopo Heref. et R. Episcopo Cestr. et S. Episcopo Wircestr. et R. Com. Legr. et S. Com. Herh. et W. de Alb. pinc. et Mil. Bloe et R. de Ferr. et Philippo de Belmeis apud Brugg. in reditu obsidionis Salop. Anno Dominice incarnationis MCxxxix, regni vero mei tertio.

Having thus cleared my self, I may proceed upon the Record of the 15th of Hen. 3. the Grant there, *de singulis feodis militum suorum*, is as large as that which he triumphs so much in; and yet the *Milites sui*, were only, *tot de quot ipsi tenentur nobis respondere, quando nobis faciunt servitium militare*. Nay, the Distress granted by the King, is, *de singulis feodis Militum qui de eis tenent*, and yet the *Milites qui de eis tenent*, could not possibly be more than such as were liable to the King's Duty; for otherwise, the Lords were to have more for their own use, than the King for his; because, it was 40. s. upon every Knights Fee. And, if the Prior of Coventry was to answer the King only for two Knights Fees, being *tot de quot* &c. and yet had 40. s. upon every one of the ten that held under him, he would have had more than the King; when besides, it was to be only *ad prædictum auxilium*, for raising the Aid for the King, which was from so many as he was answerable for, when he did his Service, and that was less than the Subsidy, granted *per Mag-nates et Communitatem*. Admit that the last was not properly *novum Feoffamen-*

Nota.

tum, yet 'tis the Thing, not the Word,
I contend for; and such were not charge-
able by Tenants in Capite.

His second Interrogatory, *who ga-* Jan. &c.
ther'd this Tax? was prevented in my P. 234. &
former Essay, and fully answered now. 235.

And, by the next, it may be he will
blot out his third, *Who were to be di-*
strain'd by Vertue of this Writ? And, per-
haps he will not think it evident beyond
Contradiction, from the Writ to the Skeriff Against
of Suffex, That the Tenants in Capite, Jan. &c.
were, Omnes alii de Regno, any more, P. 78.
than that Fideles after Milites, were still
Milites, because, he fancies, that Mat-
thew Paris contradicts the Record, and
is of better Authority.

How idle is his Conjecture upon the
Plea of the Prior of Coventry, That he
was chargeable for no more *Knights*
Fees, than were his *Possession*? Where-
as, he was to answer, *De tot de quot te-*
nebatur Regi respondere quando, &c. when
he did his Service; which was no more
than two *Knights Fees*, though he had
ten under him. But the two, though
held by others, were chargeable by
him without the Consent of his Te-
nants.

If a man holding of the King in *Capite*, by the Service of two *Knights* alien'd one, or two *Knights Fees*, with Licence, without particular Exemption from the King's Duty, in this Case, the Burden went along with the Land; but, if he had, according to Licence, made sufficient Provision for the King's Service, the rest he might have rais'd for his own use: and though the Service continued to be reserved to the King, yet the Alienee before the Statute of *Quia emptores terrarum*, which was introductory of a new *Law*, was Tenant to the immediate *Feoffor*, this Tenant had no Right to be at the King's Council of Tenants, and yet was to answer *Escuage*, and all manner of Charges, as assist by the Tenants in Chief, who were the only Council for the purposes of such Tenure.

——— *Si quid novisti rectius istis.*
Candidus imperti, si non, his utere mecum.

“ If our wise Author greater Truths
 “ have taught.

“ Shew me wherein, or take what I
 “ have brought.

To

To go on with *Great and General Councils*, we find at a *Great Council*, ^{21 H. 3.}
Comites, Barones, Milites, & liberi homines. Whereas, 'tis said, on the other side, that none under the Degree of *Knights* came.

At another, *Barones, Proceres, & Magnates, ac Nobiles Portuum Maris habitatores, nec non Clerus, & Populus universus*. ^{Jani &c. p. 244.}

'Tis a ridiculous Answer to this, that all these are put together, only to make an Impression upon the *Pope*, as if the Sense of the whole Nations Representative, whatever it were, were not as much to move a Foreign Prince, as the whole Nations.

^{45 Hen. 3.}

Three are chosen out of every County, to represent the *Body of the County*.

An Agreement was made between King and People, *A Domino Rege, & Domino Ed. filio suo, Prelatis & Proceribus omnibus, et communitate regni Angliæ*. ^{48. H. 3. Jan. &c. p. 246.}
 To all this, may be added, that ^{p. 265.} long before, where the *ingenuitas regni* were consulted.

Here are Instances enough of greater *Councils*, than such as King *John's Charter* settles, as I have observed, those

there were made a *Council* only for the matters of their Feud ; they met ordinarily, three times a Year, and in that were ordinarily a Court of Justice : and he *betrays* his *Ignorance*, not to say more, who affirms the contrary.

'Tis no Objection to this, that sometimes we find *Regnum Angliæ* at it ; for, still 'twas *ad Curiam pro more*. Not that the Kingdom used to come of Course, but then came to that Court which was ordinary, or of Course.

That the Kings great Officers and Ministers of Justice were there, I have always yielded ; and that 'twas no Grievance to the Tenants, to have Justice administred without them at other times : and therefore it makes not against my Sense, that these often sat without the Tenants. Yet, their sitting was not at stated times, and therefore they were not *Curia pro more*. Either way, there was a great Council distinct from the less.

(1.) As to the persons composing the one and the other.

The *Great Council* had the whole Nation of *Proprietors*, or of Representatives, of their Choice ; in the other at the most,

most, the King had only his Tenants in *Chief*, and Officers and Ministers of Justice.

(2.) As to the matters treated of; the one treated of matters of extraordinary Justice; the other, but ordinary.

(3.) For time, the great *Council* was summon'd as often as the State of the Kingdom required it; the other, as a Court of Tenants and Officers, had times ascertain'd: not but that as occasion might offer it self, they might be summon'd according to King *John's* Charter. Nay, may be after that, they never met, but upon Summons; the lesser Court of Officers and Ministers of Justice, met oftner than either, but not of Course.

And, thus have I answered his Arguments from King *John's* Charter, by which, he labours to prove, That Tenants in *Chief* only, composed the *Great Council*, or were all the *Nobility* of *England*; and have given a clear Account of that unintelligible piece, as he is pleased to represent it, leaving out what I offer'd upon the Question of the Bishops Voting in *Capital Cases*, since he had no other way of answering it, than
by

by calling it *impertinent Rhapsody*. 'Tho if 'tis no better to be answer'd, 'tis not *Rhapsody* and *fancyful Stuff*: and, if the first ground from our Laws to dispute their Right, mentions it in relation to the *Curia Regis*, 'twas not surely *impertinent* to consider their Right; the *Curia* from whence 'twas excluded, being so directly to my purpose.

There are other things incidentally coming in, which I divide not into Heads, being they serve but to explain those which I have rais'd. To which, may be added, That our Author, by the Exercise of his Faculty of *Story-telling*, and setting forth the Power of the great *rebellious* Barons, has given us to understand, That the *Commons* were not first brought into the *Great Councils*, in the 49 of *Hen. 3.* unless we believe, that the great men would consent to ballance and weaken their own Power.

Against
Mr. Petyt.
p. 210.

Against
Mr. Petyt.
p. 234. &
235.

I may put the Question in his own words, upon another Occasion, *Can it be reasonably imagined, that they should give way to, or establish such Laws, as would undoe and destroy their own Settlement in Power?* Wherefore, the Argument is strong, that till then the *Commons*

mons came in their own Person; but that then the *Great men*, having the Power in their hands, clip'd their Wings. But let us see his weighty Arguments against my sense of this Charter.

In Answer to my third Head, he puts me off with the Fallibility of a *Parliament*; but, if moral Certainty, without *Infallibility*, will not satisfy him in matters of the greatest Concern, we may know what he would be at. But forsooth, this was not a full Court of Tenants, because, as was usual, only some few attested the Fact.

In Opposition to my Fifth, he tells us, that even voluntary Gifts to the Crown, are called *auxilia*; nay, even such as were more than Advances upon Services. But, what proof is there, that such were here meant, when not only Services, because of Tenure, with the Advances upon them, but what came from more than Tenants, are called *Auxilia* too. p. 10.
& 11.

As general Objections against my Sense.

(1.) If Tenants in Capite were a great Council of the Kingdom, for Aids and Escuage only, which is hardly reconcileable to p. 12.

to Sense? (Why so, good Dr.? May there not be a great *Council*, especially a *Common-Council*, to a particular Purpose? Nay, you your self confine it's Power to the raising of Taxes. *Why was the Cause of Summons to be declared?* Because of the occasion requiring greater or less *Aid*.

p. 13.

(2.) Lastly, *If all Free-men, or, as our Author saith in other places, all Proprietors were Members of the Great and General Council of the Nation?* 'Tis strange there should not have been the same Care taken, that they might be summoned as well as the *Tenants in Capite*; Certainly they came not to them by instinct; nor is it scarce probable, that they would leave their *Ploughs and Country Business*, to travel from one remote part of England to another, to these great *Councils*, which seldome continued above three or four days, if they had had Right so to do.

This is as trifling as the rest, for, if the *Common Law* took care for their Coming, and for their general *Summons*, nor had their Right been denied them, there was no need of special Provision by that Charter.

Upon my seventh Head of the Distinction, between the *Great Council*,
and

and the *Curia pro more*, he attacks me very vigorously; and having before tax'd me with new modelling the Government, *wild, extravagant, and confus'd Notions,* *unintelligible Vagaries, impertinent Rhapsodies, perverse Interpretations, Ignorance,* *and Confidence;* to say no more, *monstrous abusing of History, cheating and abusing my Readers, and wresting Records and Histories,* with a long *Et cætera:* out comes this gentle Rebuke,

And indeed as he deals with Sir Henry Spelman's Glossary, in saying, the second part was not his own; so doth he shuffle off all Records and Histories, which are directly against him, by saying, the Curia or Great Councils there mention'd, were but an ordinary Curia or Council, and such as in his own Judgment, contain any thing that makes for him: The Councils there spoken of, are Great and General Councils, to be sure.

'Tis, doubtless, an hainous thing, to call that a *Great or General Council*, which is so in my own Judgment: But, if I prove, and that out of himself too, that there came more to the King's *Great Councils*, than his Tenants in Chief, and Officers, such as compos'd the

Curia

Curia, held *pro more* thrice a year ; surely, it lies upon him to shew that at any one *Council*, where more than Tenants were charged, Tenants only were present. And I affirm, that he neither has nor can produce one Authority, which upon Examination, can signifie any thing.

And to retort his last Charge, *as he deals with Sir Henry Spelman*, in putting upon him his own, or his Friends Sense, *So he doth shuffle over Records, which are directly against him*, and supplants them by *History* seemingly for him: And if the last contain any thing which in his own Judgment makes for him, the *Council* there spoken of, is a Great and General Council of Tenants in Chief only, to be sure, though the Record mention more.

Our Author says of the *Curia*, which I contend to have been *pro more*, or ordinary, *If he can make the Court holden coram Rege & Consilio, before the King and Council, which he hath made his Instance for his ordinary Court, and be the same with the Common Council of the Kingdom establish'd by that Charter*, meaning King John's, he gains the point ; but,
if

if it cannot be done, he may very well blush at his own Confidence, to say no more.

Truely, I should rather blush at the want of Sense in that Paragraph, if it were mine; for, I cannot well answer for making the Court, *and be the same*. But, since he has informed me where the point lies, I can easily gain it, by proving that the Court holden *coram Rege & Consilio*, became the Court of which our Dispute is; as it had the same Power, whether held by the same persons, or at the same times, is not material, so that it be the Kings *Curia*, or *Magnum Concilium*, as the Court held *pro more* was.

In Order to the clearing this, he may please to understand that the King's Court had the only Cognizance of the Kings Grants or Charters; agreeable to which, *Bracton* says, *De chartis verò regis & factis regum non debent nec possunt justiciarii, nec privatae personae disputare, nec etiam si in illâ Dubitatio oriatur possunt eam interpretari, et in dubiis, et obscuris, vel si aliqua dictio duos contineat intellectus, Domini Regis erit expectanda interpretatio, et voluntas; cum ejus sit interpretari cujus est concedere, et etiam si*

Bracton.
lib. 2.
cap. 16.
p. 34.

omni-

Curia co-
ram Rege
& Cons.

*omnino sit falsa propter rasuram, vel quia
fortè signum appositum est adulterinum me-
lius et tutius est quod coram ipso Rege
procedatur ad iudicium.* ‘ But, of the
‘ King’s Charters, and of the Deeds of
‘ Kings, the Justices, or private Persons
‘ neither ought, nor can dispute, nor
‘ if any doubt arises therein, can they
‘ interpret it; and in doubtful and ob-
‘ scure things; or, if any word contain
‘ two meanings, the King’s Interpreta-
‘ tion and Will is to be expected, since
‘ it belongs to him to interpret, who
‘ made the Grant; and also if it be
‘ wholly false, by reason of Rasure, or,
‘ because perhaps, a counterfeit Seal is
‘ put to it, ’tis best and safest, that
‘ Judgment should be proceeded to, be-
‘ fore the King himself.

Ryley pla-
cita Parl.
f. 20.

Here was a ~~standing~~ Court for these
matters, held before the King, that is,
before him and his Council. And thus,
18 Ed. 1. The Bishop of Carlisle produ-
ces the Charter of Richard the First,
about the *Advowson* of the Church of
Burgh; this was before *Thomas de Wey-*
land, and his Companions, Justices of
the King’s Bench; but, because they
did not do them Right, he Petitions
that

that the King would do him Remedy and Grace upon it; *because, none but Kings themselves ought to judge of Kings Charters.*

This is received before the King and his Counsel in Parliament: and because there was need of a Certificate to be made in the Case, 'tis referred to the next Parliament, that is, when it relates to any Judgment to be given, ^{to the} Counsel then to sit. But, the Business, as I find many of the like kind, upon the Parliament Rolls, was properly brought before the Kings Counsel in Parliament, who, as I before observed, succeeded into the places of the Tenants in the Curia; and indeed, I see not what other Account can be given of the Lords Jurisdiction. As this Counsel acted in Parliament with the same Power which the Tenants had exercised before, so we find them sometimes acting like the Tenants in the Curia, in the Intervals of Parliament, as in the 33. of Ed. I. after the Parliament was dissolved, and all sent home; but the Bishops, Earls, and Barons, Justices, and others of the Kings Counsel. Several things are transacted coram toto Consilio, and Judgments given secundum consuetudinem Curie. Indeed

deed

deed we often find, that, when Matters of Publick Concern, or which, as they say, concern'd the *Treaty*, came before them, they never undertook to determine upon them, but left them to the next *Parliament*.

But there is yet a farther Evidence, in that, as the same Matters were handled in the one and the other, sometimes in conjunction with the great Council, sometimes separate from it ; so 'twas in the same manner. And thus *Thomas de Berkley*, who was a Lord in the 4th of *Edm. 3.* was Tryed in Parliament by a Common Jury, *De bono & malo ponit se super Patriam* ; upon which, a Jury of Knights was returned.

Rot. Parl.
4 Edw. 3.

Glanvil,
lib. 2. c. 7.

And this, to be sure, was according to the Common-Law, the way of Tryal in the ordinary *Curia*, which, doubtless, was that *Affize* mentioned by *Glanvil* ; *Clementia Principis de Concilio Procerum populis indultum*. Where there alwayes was a Jury of twelve at the least.

Farther, Before the Itinerant Judges were settled, and before the Courts fixed at *Westminster*, Pleas must needs ordinarily have been *coram ipso Rege*, he

he being personally present. . And that the Tenants in Chief were there too, appears by the *Constitution of Clarendon*, which requires it in affirmance of the Common Law. *Archiepiscopi, Episcopi, & universi personæ regni, qui de Rege tenent in Capite, debent interesse Judiciis Curie Regis, &c.*

Our Adventurer in Antiquities, who treats the Author of *Jani Anglorum Facies nova* with much contempt, has this passage ; Notwithstanding he says it is p. 26. agreed on all hands, the ordinary Curia was held thrice a year, I never heard of any one of his opinion but himself ; He would make the great Court held at these times he mentions, and the great Confluence of Nobility then to the Kings Court, to be the King's ordinary Court, for this Dispatch of ordinary Business, and Controversies between the King and his Subjects, or between man and man. I will not deny, but often Petitions might be put up, and Complaints made to them about private matters, such as alwayes have been to the House of Lords, and many more of antient times, than have been for a Century or two of years. And that they did determine and pass Judgment in those Cases.

But, that they were therefore the King's Ordinary Court, I think no body will say, but such as never read antient History or Lawyers, or, at least, never intend to understand them.

Truly, he has an excellent Faculty to bring men's Arguments into the shape of his own; and then 'tis easie, even for him, to expose them. He would have it, that, according to my Notion, the House of Lords is the King's *ordinary Court*, because of determining in matters of *ordinary Justice*; whereas, I make the Notion of *Ordinary*, not to consist in that onely, unless it be at *ordinary*, or stated times. Nor do I say that the House of Lords is an *Ordinary Court*, but succeeded into the Jurisdiction of the *ordinary*.

But he does well to serve my *Hypothesis*, in making the Comparison between these two Courts. The one of which, as I before observed, succeeded to, and gives an *Idea* of the other, though it agree not in every particular. And, as the House of *Lords*, divided from the *Commons*, never could make Laws; so neither could the *ordinary Curia*, unless when joyned to the *greater*: though, both the House of Lords,

and the *Curia* before, were the Supreme Courts of Judicature. And, if the *Curia* was held thrice a year, and confin'd to Matters of *ordinary Justice*, which, I think, I have proved, in shewing that the Legislative Power was vested in more than the King, and his Tenants and Officers; then I find not that our Champion so much as blunders upon any thing against what I say.

But, to prove more particularly my Assertion, which he would have to be my singular Opinion;

Knighton, to instance in an Author of the best credit, tells us of King *William the First*, *In præcipuis Festis profusè* *Knighton, f. 2354.* *convivabat, natale Domini apud Glover-*
niam, Pasche apud Wintoniam, Penteco-
sten apud Westmonasterium quando in An-
glia foret tenere consuevit. 'On the chief
'Feasts, he used to make great Enter-
'tainments, when he was in *England*,
'He used to keep his *Christmas* at *Glo-*
'*cester*, *Easter* at *Winchester*, *Whit-*
'*son-tide* at *Westminster*. Besides, at
these times, when the height of the
Feasting was over, Causes us'd to be
heard, as *Eadmerus*, who might well *Ea'merus, f. 37.*
know, informs us. *Peraclis igitur festi-*

*vioribus diebus diversorum negotiorum
Cause in medium duci ex more ceperunt.*

‘When therefore the most Festival
‘dayes were over, they began to treat
‘of divers Causes, *as was the usual man-
‘ner.*

To these Feasts there us’d to come
onely Tenants, and the King’s great
Officers, which I need not go to prove,
since our Author would have Tenants
onely, even exclusive of Officers that
were not Tenants, to have come to the
greatest Councils.

So that the Court being held thrice
a year, the *Members* of it, the same
which I have shewn, and their Business
ordinary Tryals, here is that *Ordinary*
Court which I have contended for.
And thus, having given some *reason* for
my *confidence*, I may expect to be be-
lieved.

P. 49.

This might serve upon this Head,
but, I thank him, he generally gives me
occasion, by reason of his Exceptions,
to confirm the Rules which I take.

Jer. &c.
P. 191.

He fancies he has a great Advantage
over me, by my saying, that *the Admini-
stration of Justice*, (which I mean of
the common or ordinary Administra-
tion,)

tion,) was taken from the ordinary Curia, and fix'd at the Courts in Westminster Hall. And not observing that there was the same Clause in King John's Charter, I had plac'd it some three years too late, according to him, though, in truth, there were Justices *in Banco sedentes*, which seems to be meant of a fix'd place, in the time of H. 2. And so it must have been, since King John's Charter was not introductory of any new Law.

But I understand not the force of his Argument, *that if this Council summoned, as is there, were the Curia Regis Ordinaria, and went off by reason of this Clause, it certainly went off before it began.* Unless he acknowledge, that the Curia there ^{provided} provided for, be it ordinary or extraordinary, was not in Being before : And truly, I shall not quarrel with him for this. But I appeal to any man, that will consider without Byass, Whether 'tis manifestly prov'd in the Answer, that, after the granting of this Charter by King John, there were many general and great Councils or Colloquiums summon'd by Edict, according to the Form, which he would have to be there prescribed?

*Communia
placita non
sequantur
Curiam
nostram.*

*Glanvil,
lib. 2. c. 6.*

*p. 46:
& 47.*

ib.

However, it seems, by him, that there was no such Form for *general* and *great Councils* before.

Jan. &c.
p. 192.

But, how well do's he understand what I say? I make but part of the Power of the *Curia* to have been taken away by *Magna Charta*, (or, be it by the Law there affirmed) but that of granting *Aid* and *Escuage*, which onely is mentioned in that part of the Charter which relates to the *Curia*, whether *ordinary* or *extraordinary*, I say, continued to the 34th of *Ed. 1.* at least, of Right it should, unless swallow'd up in Parliaments. But, whenever the Court which granted such Aid as the Charter means, ceas'd to be held, *pro more*, thrice a year, it ceas'd to be an *ordinary Curia*. This might have been either by the pleasure of the King, who needed not to summon his Tenants, but when he pleased: Or else it might have been in the 49th of *Henry the Third*, when, our Author says, there was a *new Government*.

Against
Mr. *Pitt*,
p. 110.

Against
Jan. &c.
p. 53.

I agree with him, that the *King's ordinary Court* continued in the several *Kings Reigns*, in all its branches and divisions, and derivative Jurisdictions; and yet not the same, any more than a man

man is *the same* with his Executor that represents his Person, and is *the same* in Law.

The House of Lords had the Jurisdiction of the ordinary *Curia*, most properly, being as he himself yields, 'twas *ex tantâ multitudine* of men, holding in *Capite*, that some had the special Writs, which made them of the upper House; and coming in the Degree and Circumstances of Tenants in *Chief*, they had the same Power. The Justices and Officers that were not Tenants in *Chief*, must needs have been but *Assistants* in the *Ordinary Curia*, as they have ever been in the House of Lords: and, the inferiour Tenants, without doubt, were to serve on Juries, as the *Knights* were Jurors in *Berklay's* Case before the House of Lords; nor do I find, that these inferiour Tenants had any other Power or Interest ^{there} except that of giving Taxes, which, is ~~the~~ ^{the} only Power which our Author seems to yield to the *greatest Council*.

The Power of the Justices Itenerant, or of them that were settled at *Westminster-hall*, was derived from the King and his *Curia*, either *ordinary*, or when it
ceas'd

cas'd to be *ordinary*; yet, in effect, continued the same Court. And thus, as late as the time of *Edward the Second*, you shall find the *Curia then*, not only to have Writs of Error brought thither, or to empower the Barons of the Exchequer, who were properly under it, to determine matters concerning the King's Revenue, or concerning Tithes, but, for Causes of all Natures, to be tryed before any Judges, they awarded the Writs, and appointed the Judges, sometimes *mandetur Justiciariis de utroque Banco*.

Rot. Parl.
8 Ed. 2.
n. 209.

These Benches were very anciently fix'd at *Westminster-hall*, but still they were so dependant upon the King's more immediate *Curia*, that often they were only to hear the Cause, and certify to the higher Court, what appear'd to them, as was usually done by those who were assign'd to hear the Petitions delivered in *Parliament*. Sometimes, Judges were empowered, *Ad audiendum & terminandum* matters *tam ad Sectam Regis, quam aliorum*. But, certain it is, that where an Estate was deriv'd from the King's Grant, or the King's Right and Title might be affected

acted by any matter in Question, 'twas usual for the *Curia* to order that Judgment should be stay'd, till there was a new Power had, after Certificate how the matter stood.

"*Thomas de Multon* and *Anthony de Lucy*, pray, that there being need of inspecting the Rolls of *Chancery*, in order to the clearing their Title to certain Lands, there might be a view of the *Records* and *Remembrances*. Rot. Parl.
9 Ed. 2.
n. 65.

Part of the Answer is as follows.

Mittatur ista Petitio, sub pede sigilli Willielmo Inge, & sociis suis, Justiciariis Regis ad placita Regis coram Rege tenenda assignatis, unà cum processu super negotio in dictâ Petitione contento coram Rogero de Brabanzon, & sociis suis prius habito, quem quidem processum idem Rogerus per breve Regis consilio Regis apud Lincolnum liberavit, & mandetur eis per breve quod examinato diligenter toto negotio prædicto, & vocatis servientibus Regis, & aliis qui fuerint evocandi in negotio illo procedant prout de Jure fuerit faciendum.

Ita tamen quod Rex super Recordis & processu dicti negotii certioretur antequam super hoc ad redditionem judicii procedatur, & scrutendum insuper in Cancellaria, &
in

*Si necesse
fuerit.*

in Scaccario si necesse fuerit rationes & evidentiæ siquæ pro jure Regis in hac parte poterint inveniri.

It seems, the Justices of the Common Pleas, *Brabanzon* and his Fellows, not being particularly commission'd, could not proceed to Judgment, for want of Power to look into the Rolls of *Chancery*; nor could the Judges of the King's Bench, though they had Power of Inspection then given them, proceed with effect, till they had certified the King, in his more immediate *Curia*.

*Rot. Parl.
8 Ed. 2.
n. 114.*

The Heirs of *Bartholomew Redman*, petition, that whereas they held Lands of the *Abbot of St. Bennet*, by certain Services, which Land, they had let to the *Queen*, she obliging her self to discharge the Services, but had not, they might have Grace and Remedy. This was to be examined in *Chancery*, but the Judgment was referred to the *Curia*. *Referatur Regi, & Rex faciet justitiam.* To this *Curia*, all manner of Justices were accountable for their Actions.

*Responsa
et per Cor-
ti iur.*

*Rot. Parl.
8 Ed. 2.*

So the Judges of Assize in *Cornwall* being complained against for acting irregularly, two are appointed to examine the matter, and to certify the

Coun-

Council, who had reserved the Judgment to themselves. In short, the supreme Judicature over all Causes, was in this *Curia*, the House of Lords, the very same which the Court of Tenants in *Chief*, with such others as us'd to come *pro more*, had before; and yet there was a common or ordinary Administration in the Judges.

But, our Author, who is, by Fits, the kindest hearted man in the World, proves my Notion to my hand, out of Britton, *Nous voluns quæ nostre Jurisdiction soit sur tous jurisdictions en nostre Royalme*; which, where it relates to Judicature, must be meant of the King in his *Curia*, or House of Lords: and there, as Judge, the King has *Power in all Felonies, Trespasses, Contracts, and in all other Actions, personal or real*. But, because it would be too great a Trouble for the King in that Court, to hear and determine in all complaints, &c. Therefore,

En primes en droit, de nous mesm & de nostre Court avouns issint ordyne, que pur ceo que nous ne sufficens my en nostre propre person à oyer & terminer tous querels del people avant dit, avouns party nostre charge ex plusieurs parties sicome icy est ordyne.

Against
Jan. &c.
p. 28. &
29.

Can

Can any thing be more plain, than that all inferiour Courts were deriv'd out of this *Curia*, for the sake of which, as well as the Kings own, the Charge was divided?

CH A P. VIII.

That ordinary Free-holders were nobles before the 49. of Hen. 3. and came to the Great Councils as such, in their own Persons.

HAVING vindicated from his Cavils, my Notion of the *Curia Regis*, and the present Seat of it's Power, I shall address my self, to shew that I have not cheated my Readers in the proofs I have brought of the *General Councils* of the Nation, much more large than the *ordinary Curia Regis*.

I thought I had shewn in my first Essay in this kind, by very clear proofs, that the *Liberè Tenentes* of the Kingdom, *Free-holders*, came to the *Great Councils* from the Reign of *William* the First, inclusively, to the 48. or 49. of *Hen. 3.* with-

without any settled Exclusion; which is enough, if it reach'd to the greatest part of them, with which the Ballance was. If I prove that, as such, to wit merely because of *Property*, be it more or less, they were *noble*, the proof will be yet stronger, because, all Authors and *Records* agree, that no *Nobles* were excluded till then. Mr. *Petyt* has very judiciously asserted the Right of *Commoners* all along before the *Conquest*, which our Opponent, like a right *Sophister*, would have to be from the Creation; whereas, that 'twas so *immemorially*, so as there are *no* Foot-steps to the *contrary*, is as much in the eye of *Law*, as if from his *fantastical Epocka*: so in *Domesday-book*, Lands are said to have been *semper in Ecclesiâ, or in Monasterio*.

To take in the Justification both of Mr. *Petyt* and my self, I shall prove, that all the *Free-holders*, which were in a true Sense; *universi de regno*, were *Nobles*. That these were the whole Kingdom, appears by one of the Statutes, requiring the entring into such Sodality.

De omnibus Villis totius regni sub decimali fidejussione debebant esse universi. Leges Saxon. Ed. cap. 19.

“ The

“ The whole People of all the Vill
 “ of the Kingdom, ought to be under
 “ or else, within, Franckpledges.

It appears by another Law, that those
 who were not *Free-holders*, were under
 the Pledge of another. *Habeat omnis*
Dominus familiam suam in plegio suo.

“ Let every Master of a Family have his
 “ Family within his Pledge : And eve-

ry *Master of a Family* must be recipro-
 cal with a *Free-pledge* or *Free-holder* ;
 for him who had not wherewith to
 maintain his Family, either no body
 would undertake for, and so he was
 cast out to be imprison'd, and no mem-
 ber of the Commonwealth, or else was
 under the Wing of another, having not
 wherewith otherwise to subsist. Agreea-

Spelman's
 Glos. tit.
 Leta.

bly to this, Sir H. S. calls these free pledg-
 es *Liberiores Villæ seu designatæ stationis.*

These *Free-holders* had an inferiour
 Court of Justice by themselves, from
 whence, Appeals lay upwards to the
Hundreds, from them to the *Counties*,

* *Leges*
Sancti Ed.
de centum
 & *Fribor-*
gis Spelm.

from them to the *Curia Regis* ; and the
Propositus or *Headborough*, was *Alder-*
mannus.

Glos. tit.
Fribur-
gos.

* *Isti* (speaking of the *Decanus decem-*
vir, or *caput de decem*) *inter Villas, &*

Vici-

Vicinos causas tractabant, & secundum for-
risfacturas emendationes capiebant, &
concordationes faciebant, (viz.) de pascuis,
pratib, messibus, & de litigationibus inter
vicinos, & innumerabilibus hujusmodi de-
certationibus, quæ humanam fragilitatem
insestant, & eam incessanter oppugnant.
Cum autem majores causæ erumpebant refe-
rebantur ad superiores eorum Justiciarios,
quos supradicti sapientes super eos constitue-
rant, scilicet super decem Decanos, quos
possumus dicere centuriones, vel centumvi-
ros, eo quod semper centum Friborgos judi-
cabant. "They treated of Causes in
 "the Vills, and amongst their Neigh-
 "bours they took Satisfaction according
 "to the Forfeitures, and made Agree-
 "ment between the Parties, (to wit)
 "about Pastures, Meadows, Crops,
 "and quarrels amongst Neighbours,
 "and innumerable Contests of this kind,
 "which infect humane Frailty, and
 "continually assault it. But, when
 "greater Causes happen'd, they were
 "referred to Justices above them, which
 "the *aforsaid Wisemen* plac'd over
 "them, to wit over the Heads of ten
 "Tythings, whom we may call Centu-
 "ries or Centumvirs, because they al-
 ways

Viz. They
that made
the Law
of Frank-
pledge.

“ways judged an Hundred Frank-
“pledges.

These Heads of the *Tithings*, who were Judges in the *Vills*, were *Aldermanni*, chose by the major part of every *Tything*. From this it follows, that if the Headborough was an *Alderman*, of the choice of the *Free-holders*, then the right of *Free-holders* to dispose of *Property*, was sufficiently maintained in having their *Aldermanni* at the *Great Councils*.

Leges Inæ.

As at that of King *Ina*, where the Laws were made *exhortatione & doctrinâ* of some great men particularly named, & *omnium Aldermannorum meorum*.

But indeed, there were besides these, *Seniores sapientes*, which, I take it, will reach to all the *Free-pledges*, and a great Assembly of the *Servants of God*; under which Expressions also, they might have come as well as the Clergy. Yet our

Glof.

P. 31.

Omnis homo qui se tenuerit pro libero sit in Plegio.

Author has shut out all *Clerks* and *Knights*, supposing them all along to have been no part of the Nation divided into *Decuries* or *Tythings*.

Leges Willielmi 1. Est quedam summa & maxima securitas per quam omnes statu firmissimo sustinentur, ut unusquisque stabiliet se sub fidei iustitiae securitate, Leges Sancti Ed. de Friborgis.

But,

But, the main point yet unprov'd, is,
 That every *Dominus Familiae*, or Free-
 holder, was a *Thayn*; and this I will
 prove by the greatest Authority, that
 of Statute Law. *Et habeat omnis Domi-*
nus familiam suam in plegio suo, & si ac-
cusetur in aliquo respondeat in Hundredo,
ubi compellabitur sicut recta Lex sit. Quod *Legis Ca-*
nuti. c. 52.
si accusetur, & fugiat, reddat Dominus
ejus Regi Weram, i. precium natiuitatis ho-
minis illius. Et si Dominus accusetur quod
eius Consilio fugerit adlegiet se cum quinque
Thariss, id est, Nobilibus, & idem sit
sextus; si purgatio frangat ei, reddat ei
Weram suam, & qui fugerit extra legem
habeatur. And let every Master have
 his Family in his Pledge, and if he
 be accused in any thing, let him that
 is of the Family, answer in the Hun-
 dred where he shall be try'd accord-
 ing to Law. But if he be accus'd and
 fly for it, let his Master pay the King
 his Were, that is, the price of his
 Head, or of his Birth. And if the
 Master be accus'd, that he fled with
 his Counsel or Consent, let him wage
 his Law with five *Thariss*, that is,
 Nobles, and let himself be the sixth.
 If he cannot acquit himself, let him
 O 2 "pay

“ pay the King the price of his Head;
 “ and let the Party that fled be out-
 “ law’d.

Lamb.
Leges E-
thelredi.
 cap. i.

Here the Master of the Family was joyned with five *Thayns*, and he made the *sixth*; and this the learn’d Antiquary, Mr. Lambart, renders, *Ascitis sibi ingenuis quinque*, taking to him five *Free-men*; for what he calls *ingenuus*, Bromton calls *liber homo*. *Ingenuus quisque fidejussor, &c. fidissimos adhibeto. Ut omnis liber homo habeat credibile plegium.*

Let every *Free-holder* have a credible pledge, (this must be confin’d to *Dominus familiæ*) unless it be of such as cannot be Pledges themselves, but under *Free-pledges*, their Masters.

Quinque
Thanis, i.e.
Nobilibus.
Leg. Canut.

And this is farther evident, in that it answers to the *Head-borough’s* purging himself, and his Tithing with five *Friborgi*, or *Frank-pledges se duodecimo existente*, that is, *Duodecimâ manu* with the 12th hand, as is required by St. Edward’s Law, *de Friborgis*, where no other Nobility is exacted, than what every *Free-pledge* had.

The ancient Laws give farther Proof in that *Satrapas*, a Peer or Noble, and *Paganus*, a Chorle, or Villain, as we find *Chorle* render’d in an ancient Manuscript

script, cited by Mr. Selden, in his Titles of Honour, took in all the Orders of men. Vld. Jan. P. 32.

Idem juris esto per omnes hominum ordines, sive Satrapæ, sive Pagani fuerint. Leges Aluredi de proditione domino-

So in the Laws of William I. whereas, 'tis supposed, that the *Thayni*, or *Barons* since answering to them, were denominated from holding of the King, we find *Thanus Regis*, and *Mediocris Thaynus*, or inferiour, *sive infamæ conditionis*, distinct. And 'tis to be observ'd, that this took in all that paid the *Hereot*, So Domesday. Bromton Leges Canuti, apud Lamb. de.

which was then a payment relating to the Army; so that this, to be sure, reach'd to all that held of any by *Knights Service*: but, it appears by St. Edward's Laws, that it reach'd to all that bore Arms. *In quolibet comitatu semper fuit unus Heretoch, per electionem electus, ad conducendum exercitum Comitatus sui, &c. Et qui in bello ante Dominum suum ceciderit, sit hoc in Terrâ, sit alibi, sint ei relevationes condonate & habeant Heredes ejus pecuniam, & terram ejus sine aliquâ diminutione, & rectè dividant inter se.* De Heretochis.

But, it will be said, whatever was the Law before William's time, it was

Legis H. 1.
cap. 29.
*Qui debent
esse iudic.
7. Rs.*

*Terra Tai-
norum Re-
gis.*

Leges Hen.
1. cap.

not so after; but, for this I will cite a Law express.

Whereas the *Tbayns* are called *Nobles*, in the Laws by me cited, and as all Authors agree, have generally since been called *Barons*, (not but that in *William the First's* time, they retain'd their old names, as appears by *Namesday* book,) we find in this Law, that they who had *Free-lands* in any County, and according to the known Law, were, and still continue Judges in the County Court, were *Barons*.

Regis Iudices Barones Comitatus qui liberas in eis terras habent, per quos debent causæ singulorum alternâ prosecutione tractari, Villani verò vel Cocsetti, vel Perdingi, vel qui sunt viles, vel inopes persone, non sunt inter Legum Iudices numerandi, unde nec in Hundredo, vel comitatu pecuniam suam, vel dominorum suorum forisfaciunt. "The King's Judges are
"the Barons of the County, they who
"have free Lands there, who are to try
"one anothers Causes. But Villains or
"Beggars, or they who are base and ill
"digent persons, are not to be reckon'd
"amongst the Judges of the Law;
"wherefore, they neither forfeit their

" own

“own nor their Masters Money, in the
“Hundred or County.

’Tis plain, that the Judgments in the
Hundreds and Counties, are those
which are here intended; so that the
Barons which have Free Lands, answer
to the Bishops, Counts, &c. And the Head-
boroughs, and other Owners of Land,
who were to be at the County Court.

*De genera-
libus placi-
tis Comit.*

And the true Sir Henry Spelman agrees
that the *Barones Comitatus* were amongst
others, *fundorum proprietarii* Free-hol-
ders: and these he says were Feudal Ba-
rons, *Baronum feodaliū species*; where,
Feudal must be meant in a Sense diffe-
rent from our Authors. But, our Un-
dertaker will prove, that none but such
as held by *Knights Service*, were *Baro-
nes Comitatus*.

This of being Suitors to the County and
Hundred Courts, &c. was a Service inci-
dent to their Tenures. For proof, he re-
fers us to *Glanvil*, but with very little
Success; for, in the 13th Book, which
he fancies throughout, to agree with his
Vagary, Liberi, & legales homines, are
as often named as *Milites*: sometimes
indeed, *Milites* strictly were required
at the Common Law; as where a Peer

Against
Mr. Petyt.
p. 40.

1 Inst. f.
of 256. a.

of the Realm was concern'd in the Action ; and four Knights upon their Oaths ought to return twelve Knights to try the Mife in a Writ of Right.

7b.f. 159. a.

p. 26.

But, the Supposition that the *Free-men, Masters of Families*, such as were Conservators of the Peace anciently, and had given the Government Security for their Obedience to the Laws, *could not be probi & legales homines*, is a Conceit, for which I dare say, *our Man of sagacious Invention* was beholden to no man. If he had looked a little better into *Hoveden*, who sometimes is in great Request with him, he might have found other free and legal men, besides Knights, and own'd so by a positive Law.

Affise Hen.
2. *Faste*
apud Cla-
rendum &
renovata
apud Nor-
thamp-
tune,
Hoveden
f. 549.

Siquis retatus fuerit coram iustitiis Domini Regis, de murthero vel latrocinio, &c. per Sacramentum duodecim militum de Hundredo, & si Milites non adfuerint per Sacramentum duodecim liberorum & legalium hominum, & per Sacramentum quatuor hominum de unaquaque Villa Hundredi, eat ad iudicium aquæ.

But, for his Notion to give it's due,

1. 'Tis absurd.
2. 'Tis dangerous.

I. We

1. We know that the Titles to Estates from before the reputed *Conquest*, are allowed upon the Presentments of the Counties and Hundreds, *Testatur Comitatus*, *Testatur Hundredus*, &c. If these were all Strangers, brought in with the *Conquerour*, how could they know the Tithe, and who enjoyed the Land, *Die quo Rex Edwardus fuit vivus & mortuus*; and by what Services, nay, who was the third Heir, as we find they present? Besides, is it supposable, that they would have allowed the old Inhabitants such large Shares, as we find in *Domesday-book*? but, if our Author had read the Tryal between Sheriff *Picot*, and *William de Chornet*, he would have found, that the *Meliores* of the County and Hundred, that present the Right to be in *Chornet*, were the *English*, who were not Tenants by *Knights Service*; since we are told, that they were all *Normans*: and this appears, in that they were *Antiqui*, such as were ancient, and knew how it was in the time of the *Confessor*; whereas, on the other side, were *Villeins*, *vilis plebs*, and *præpositi*, Bailiffs, all which may be *Normans*, if he please.

Far-

Farther, when ten Tithings of Free-pledges made an Hundred, to suppose that these were not Hundredors, legal men there, but the Knights who were not bound with Sureties to their good Behaviour, is as silly, as to say, two times two do's not make four.

Against
Jani & C.
p. 13.

Against
Mr. Petty.
p. 42.

2. His Notion is dangerous, and that according to that Improvement of it, for the sake of which, 'twas broach'd; But of these Tenants in Capite, 'tis highly probable, (if not without doubt) that the two Knights were at first chosen by the other Tenants in Capite, in every County, to represent them. And the Reason given for this, is, That the Elections were to be made in the County Court by the Suitors: and this he imagines to have continued in such Tenants, till the 8th of H. 6. c. 7. by which, any man that had 40 s. per annum, of any Tenure, was permitted to be an Elector.

8 H. 6. c. 7.

Whereas, to any one but him, 'twill be obvious, upon reading the Statute, that it is restrictive of that Power which before was in men of lesser Estates, but is very far from giving any new power.

Whereas the Elections of Knights of Shires, to come to the Parliaments of our Lord

Lord the King, in many Counties of the Realm of England, have now of late been made by very great and outrageous, and excessive number of People, dwelling within the same Counties of the Realm of England, of the which, most part was of People of small Substance, and of no value, whereof, every of them pretended a Voice equivalent, as to such Elections to be made, with the most worthy Knights and Esquires, within the same Counties; whereby, Murther, Riots, Batteries, and Divisions among the Gentlemen and other people of the same Counties, shall very likely rise, and be: therefore, 'tis provided, that the Choice shall be in every County, by People dwelling and resident in the same Counties; whereof, every one of them shall have Land or Tenement, to the value of 40 s. by Year, above all Charges, &c.

Here is manifestly an Exclusion of some former Electors, but no new ones created; wherefore, the unforc'd Consequence is, that all Lands being now held in Free, or common Socage, and there being no time for Prescription, or any new Law, impowring such to chuse their Representatives, this great Preservative of the Rights and Liberties of the

the Subject, is defunct; and, I dare say, 'tis neither within his Art, or his Will, to recover it.

Against
Jan. &c.
P. 91.

Bracton,
lib. 1. c.
10.

ib. cap. 5.
P. 4.

ib.

Bracton.

Yet, though he would smother it, I doubt not to find it alive amongst his Nobles; for, whatsoever made a man Noble, secured this Priviledge to him: But, *Ingenuity* made a man noble, therefore every *Ingenuus* was always of Right an *Elector* for the *Great Councils*, or present at them. That *Ingenuus* and *liber homo*, were the same, I take it is evident from *Bracton*, who makes the Division of persons, to be into the *Liberi*, *Freemen*, or else *Servants*; of such as are *sui juris*, who have that Liberty, which he says is of the Law of Nature, or such as are under others, whose Liberty is *obfuscata*, darkened, or beclouded by the Law of Nations. These are but different Expressions of the same thing: under the first, are the Nobles in a strict sense, as of an higher Order, such were the *Majores Barones*, and the *Ingenui*, *sive Liberi*; nay, the *Libertini* too, such as were manumitted and restored to their natural Liberty, under the other, were *Servants*, *Villains*, or others.

The

The learned *Cluverius* in his Description of Germany, from whence we derived our Distinctions, makes three Orders under the first Division. But, all Free-men of either Order, were *Ingenui*, with *Bracton*, who takes no difference here. And if we believe our Author's *ipse dixit*, all *ingenui* were Nobles, *Quod erat demonstrandum*.

Cluver.
Germ. Antiq. f. 121.
cap. 15.
Nobilium,
Ingenuorum
Libertorum,
cui admixtus
Libertinorum.

'Twill be hard, if amongst these *Ingenui*, we do find *prodes homes* too; but our Author has seen it written, *prudes homes*, though he cannot call to mind the Record. And truly, we have no great Reason to trust his Memory, since 'tis so treacherous, to expose him by frequent and palpable Contradictions. Well, *Prudes homes* they were, Ay that they were, that came to the Great Councils, such as were the *Wits* in the Saxon *Gemotes*; but, if to the *Folk-mote*, there came to be sure, all the *Frank-pledges*, then they were *Noble Wits*; and so *vous avez*, the *liberi homines*, *prodes homes*, *prudes homes*, and *Wites*, or *Sapientes*.

Against
Jani &c.
P. 42.

Against
Petyt. p. 21.

But upon second Thoughts, the *Communitas populi* were the Community of the Barons only, together with the *Alios*, the *Milites*, who held by Military Service of the great Barons, and the lesser Tenants in Capite.

Against
Petyt. p.
129.

And

And, for this there is Demonstration, in that the Meaning of *Populus* is to be taken as *contradistinct* from *Clarus*, and then it signifies no more than *Laity*; it doth not denote a *distinct State* or *Order amongst secular men or Laies*,
 lb. p. 56. but an *Order and State of men, distinct from the Ecclesiasticks or the Clergy*. This, by no means, is meant of the *inferiour sort of People*.
 lb. p. 57.

But, good Mr. Interpreter, if *Clerus* signifies *inferiour Clergy*, as well as the *Superiour*, nay, is most commonly appropriated to the *inferiour*, what becomes of your profound Observation, and of all your Presidents? And how comes it to pass, that even the poor *Mass Priests* were anciently called *Mass Thegnes*?

Possibly, no man has a better Faculty than this Gentleman, of facing out clear Proof, which he often brings against himself: Thus he tells us, The great men of the whole Kingdom, the Arch-bishops, Abbots, Priors, Earls and Barons, were called together, in which Council, the King, by his own Mouth, in the Presence of the great men, in the Refectory at Westminster, desired a pecuniary Aid; to whom it was answered, that they

An. 1244.
 28 H. 3.
 Against
 Mr. Petyt.
 p. 162.

they would treat about that matter. And the great men retiring out of the Refectory, the Arch-bishops, Bishops, Abbots, and Priors, met and treated by themselves.

At length, the Earls and Barons were asked, if they would unanimously consent to the Resolutions they had taken, in answering and making provision for what had been demanded of them?

Who answered, that without the Common University, they would do nothing. Then, by common Consent, there were elected on behalf of the Clergy, the Elect of Canterbury, the Bishop of Lincoln, Winchester, and Worcester. On behalf of the Laity, Earl Richard the King's Brother, Earl Bigod, Earl of Leicester, Simon Montfort, and Earl William Marshal. For the Barons, Richard Montfitchet, and John Balio, and the Abbots of Bury and Ramsey; that what they twelve should resolve on, should be recited in Common, and that no form should be shewn to the King, by Authority of the twelve, which had not the Common Assent of all.

Here is so manifest a Distinction between Lords and Commons, Members of the Great Council, that I dare say, no man

The Dr. omits eng-
liffing ex parte eorum,
either not understand-
ing it, or because it
manifestly destroys his
whimsy, p. 17.

Commune
universita-
te, rather
the Uni-
versity of
the Com-
mons.

man but this Dr. could have united them into one Order, as he does all the Laity.

Let our
Dr. answer
this, to
save his
Credit.

Against
Mr. Petty.
P. 56.

But here 'tis obvious, that when the Lay Lords, *Earls* and *Barons*, were all together, and ask'd by the dignify'd Clergy, then present, whether they would agree with them? The Lay Lords answered for themselves, that they would do nothing without the *Common University*, which could not possibly be only the Lords Spiritual and Temporal, they referring to others, distinct from both; and if the Temporal Lords had concurr'd, here had been the Consent of the *Common University* of Lords, if we may so call it. But besides the Consent of all the Lords, there was requir'd the Consent of another body of men, and these must be the *Commons*, which might well be of Clergy and Laity; wherefore, here was *Clerus* and *Populus*, and that such as were *inferiour* to *Barons*, *Tenants in Capite*, and *Noblemen*, that is, to such as now are acknowledged to be the only Nobles.

But for a full Proof, both of our whole Cause, and of his excellent Faculty

Faculty of answering himself, as long since
 as King John's Reign, there were present at
 Council, *Universitas, Comitum, Baronum, Mi-*
litum, & aliorum fidelium; *alii fideles* fol-
 lowing the *Milites*, he yields, that therefore
 they were the King's ordinary Subjects, or o-
 ther Free Tenants, and not Tenants in Capite.

Against
 Mr. Petyt,
 p. 183.
 Pat. 8. 9.
 Joh. n. 3.

Thus he stifles his thin Notion with a
 Record, and yet pretends, by his Chymical
 Art, to bring it to Life again, with the Au-
 thority of an Historian; who, though
 much to be rely'd on, is surely of less Au-
 thority than a Record. Well, but what
 says the Historian? Do's he say it was not so
 as the Record has it? No, but expresses
 himself in general Terms, and tells us, that
 there were the *Comites, Barones, Milites*, and
 others, *qui ei servitium militare debebant*.

Perhaps he will smile, at my saying 'tis in
 general Terms, when he is so particular.

But with his good Leave, he is not clear,
 whether 'twas Service because of the King-
 dom, which all men were to perform in
 Proportion, even to their personal Estates,
 or because of Tenure.

Indeed, he by no means seems to incline
 to the last, is being *qui debebant Servitium*
militare, not *qui tenebant per Servitium mili-*
tare. Besides, all that so held, had been
Milites; but here was another sort of men.

P

Yet,

p. 184.

Yet, the Dr. very comically tells us, *Here we find others that ow'd the King Military Service, and so were Tenants in Capite, besides Earls, Barons, and Knights.*

The place is plain; yes 'tis very plain, that the Dr. says so : and as plain, that few men else would have spoke so. —

ib p. 39:

Glos. p. 10.

Pray, Good Sir! Do you know the meaning of Tenure in *Capite*, by *Knights Service*? Where lyes the difference between holding in *Capite* of the King by *Knights Service*, and owing the King Military Service, as Tenant in *Capite*? If there be no Difference, how comes it to pass, that one who held in *Capite*, by *Knights Service*, was no Knight, tho Tenants in Military Service, in those times, were the only Great Freemen, (as that Service was the only free Service) although a Bond-man might hold by free Services, and yet be a Bond-man.

p. 40.

Do not you your self own, that all the legal men or Jurors that held in Military Service, were *Milites*, in referring to *Glanvil*, where, are some Writs to summon Juries of *Knights* only, whence you would infer, that the *Legales homines* mention'd by other Writs, were all *Knights*. Were they Bond-men holding in Military Service, that were the *Fideles* at Council?

Jan. p.
265.

But that the *Plebs*, the *Ingenuitas Regni*, or *liberi & legales homines* (as Sir H. Spelman

man

man tells us, the Word *Ingenuus* has anciently been us'd) were Members of the Great Councils, notwithstanding the Doctors Sense, and the Assertion put upon Sir Hen. that amongst the several Councils which he had read of, he found nothing of the *plebs*.

2 part of
the Glos.
Jan. p.
266.

The Dr. may please to consider of these two following Authorities.

Quomodo Nigellus Episcopus appellatus est ad Romam.

Sedit autem Rex Stephanus in sede regni sui & siluit terra in conspectu ejus & veniens Londonias que caput est Angliæ occurrunt ei pacifice suscipientes illum cum magno honore ibi concilio adunato Cleri & populi Episcoporum atque Abbatum Monachorum & Clericorum, Plebisque infinite multitudinis presidente Romana sedis legato fratre Domini Regis Henrico Wintoniensi Episcopo & Thebaldo, quem nuper Archiepiscopum Cantie fecerat de statu Regni cum illis tractavit, & ut in hostes pacis & patrie Sententiam Ecclesiasticæ severitatis promulgarent indixit cumque invicem causa ab alterutro agerentur prior quidam vitalis nomine Conquestus est, coram omnibus quod Dominus Eliensis Episcopus eum non judiciali ordine de sua Ecclesia expulserit huic per omnia ille legatus favebat & suffragari vo-

Chronicon
Eliense p.
215 Dr.
Gals.

luit cujus & machinatione quidam magna
Auctoritatis, & Prudentiæ viri adversus do-
minum Nigellum Episcopum parati insurre-
xerunt illum ante conspectum Domini Papæ
appellaverunt sinistre & objicientes plurima
maxime quod seditionem in ipso concitaverat
regno & bona Ecclesiæ suæ in milites dissipa-
verat aliaque ei convicia blasphemantes im-
proborabant.

Anno 1136. Edictum per Angliam promul-
gato summos ecclesiarum ductores cum pri-
mis populi, ad Concilium Londinas conser-
vit; illis quoque quasi in unam sentinam con-
fluentibus, ecclesiarumque columnis sedendi
ordine dispositis, vulgo etiam confuse,
& permixtini ut solet ubique se inge-
rente.

SECT. 2.

ANY one that reads our Author's book
A gelt from his indecent Reflections,
would think him to mean very honestly,
and that he urg'd nothing, but with de-
sign of being confuted; thus when he pro-
duces Mr. Camden's Authority for the new
Government, and charges me with a design-
ed Omission of *Eis*, one would imagine,
he thereby intended to put an Argument
into my Mouth, for the Rights of inferi-
our Proprietors.

Against
Mr. Petyt.
p. 227.

Statuit & ordinavit quod omnes illi Co-
mites, & Barones Angliæ, quibus Rex dig-
natus

natus est brevia summonitionis dirigere, venirent ad Parliamentum suum, & non alii, nisi forte Dominus Rex alia illa brevia eis dirigere voluisset.

These *alia illa brevia*, he fancies to have been directed to the *Pares Baronum*; wherefore, as they had the same Writs with the Barons, and were Barons before, being part of the Baronage of England, 'tis no more, than that all Barons to whom the King directed his Writs, should come, and no other Barons, but such as he directed his Writs to, and they who were Barons before, and called by Barons Writ, must, by a strange kind of Metamorphosis, cease to be such; besides an Alteration then being made, and the Commons not taken notice of, they must have come before, otherwise, whence is their Right at this day? And what other Change could there have been, but the bringing in Representations instead of personal Rights, and that amongst inferiour Land Owners, since the *Majores Barones* came before in Person, and Burroughs holding in Capite by Representation, as appears by E. 2. nay and Towns incorporated, not holding in Capite.

Against
Jan. &c.
p. 7.

But 'twas *nisi forte*, unless casually, or by Chance, or sometimes, other of those same very Writs, and of the same Form which

had issued out to the Earls and Barons, were directed to any other; that is in effect, according to his Notion, unless the same Writs which were directed to Earls and Barons, were directed to Earls and Barons, which same Writs, must have different effects upon persons in the same Circumstances and Qualifications. But, how can *forte* here signifie more than When? For, being the times when the Parliament should sit, were not ascertain'd then, or since, they were to be governed by Chance and various Accidents determining the King's mind.

But, whereas the *alia brevia* are supposed to be directed to the *Pares Baronum*, where will such *Pares*, not Earls, or Barons, be found in any of the ancient Statutes of the Realm, until E. 2. to signifie the Nobility.

Dic quibus in terris, & eris mihi magnus Apollo.

Upon the whole, if *eis* turn the words to the Dr's Sense, 'tis manifestly put in by mistake; for, that Sense would set aside the Authority, which even himself receives.

SECT. 3.

TO evince the Truth of my Notion, that the *Commons*, such as are now represented by *Knights, Citizens, and Burgeses*, came to Parliament from of old time under

under the name of Nobles. (Not to enforce the Argument à fortiori, from the Traders being sicnt * *Proceres, or quasi optimates: Londinenses qui sunt quasi Optimates pro magnitudine Civitatis in Anglia*) This I insist upon, that even in those very times when Commoners undoubtedly came to Parliament, as now, all the Members are called Nobles.

It was affirm'd in the Confessor's Law, received by William 1. *Debet etiam Rex omnia rite facere in regno & per Judicium procerum Regni.*

This very Law, part of the Coronation Oath, wherein those *Proceres* are now call'd *Vulgus*, E. 1. interprets, when in answer to the Pope's Bull sent by his Chaplain, *Pro censibus colligendis, & denario Beati Petri*, he writes, that his Parliament being lately dissolved, *Super hoc nequiverimus, super petitione censûs ejusdem deliberationem habere cum Prælati & Proceribus nostris, sine quorum communicato Concilio Sanctitati vestræ super prædictis non possumus respondere, & jurejurando in Coronatione nostrâ præstito sumus astricti quod jura Regni nostri servabimus illabata, nec aliquid quod diadema tangat Regni ejusdem absque ipsorum requisito consilio faciemus.*

If the Knights of the Counties were Grantz (as he would have it) because of Tenure in Capite, how comes it to pass, all the Citizens and Burgeses were Commons, when they that came for the Counties were Grantz?

* Malmesb. Hist. nov. fo. 106.

De regis officio & appendiciis coronæ regni Bri:anniae.

Rot. Claus. 3. E. 1. m. 9. Cedula. Placi'a coram Domino Rege apud Westm. de Term. Pasc. Anno Regis E. 3. post conquestum 20.

This royal Comment upon the former Law, shews us, that the same Council, which was a *Council of Peers*, when, according to the Dr. there came the *Majores Barones*, their Tenants by *Knights Service*, *Burroughs* holding in *Chief*, and *Towns* incorporated not holding in *Chief*, is still a *Council of Peers*, though compos'd of all the former, and the *Grantz* of the Counties; which, as I have shewn, were not confin'd to men of those Tenures. And, what reason can be shewn, why the *Grantz* of the Counties were not *Peers* in the Reign of *William* the First, as well as of *Ed. 1.*? That then they were call'd *Nobles*, the following proofs make evident.

An. 1275.

M. West.

f. 407.

3 E. 1.

Rex ad Parliamentum West. omnes Nobiles Regni sui jusserat congregari, in quostuta multa ad utilitatem Regni fuerunt publicata. This assembly of Nobles, was the Parliament at *Westminster*, where the Sta-

Cook 2 Inst.
f. 156.

tutes were made by the King, *Person Counsel, & per l'assentment des Archevesques, Evesques, Abbes, Priours, Counts, Barons, & tout la commonalty de la terre il lonques summons.*

An. 1275.

4 E. 1.

Ma. West.

fo. 408.

Post pascha ad Parliamentum West. multis Nobilibus congregatis pacem suam quondam pacis perturbatoribus Rex concessit, quintam decimam omnium bonorum temporalium

*nam Clericorum quam Laicorum in auditu mo-
re ad unguem taxatam Rex jusserat confiscari.*

Here the *Commons*, included under the
name of *Nobles*, granted the 15th, as ap-
pears by these Authorities.

*Rex &c. Cum Archiepiscopi, Episcopi, Ab- Rot. Pat. 4.
bates, Priores, Comites, Barones, Milites, E. 1. m. 6.
& omnes alii de Regno nostro quintam de- intus.
cimam de bonis suis (quibusdam tamen excep-
tis de honore de Bergaveny) nobis liberali-
ter concesserunt.*

*Rex &c. Licet Comites, Barones, & alii Rot. Pat. 4.
magnates, & Communitas Regni nostri quin- E. 1. m. 6.
tam decimam omnium bonorum suorum, &c. intus.
Pro R. Can-
tuar. Archi-
episcopo.*

Let any sober knowing man consider
these few Instances of many, wherein the
Commons, undignify'd *Proprietors* of Land,
are comprehended under words now ap-
propriated to the *Higher Order*, and let
him think with himself, whether these were all
Tenants in Capite, as our reverend Author
insinuates, but without all colour of Reason.

I must take leave to add a few more
Authorities, to prove, that after 49 H. 3.
all the *Members* of *Parliament* were call'd
Nobles; tho, that the *Commons* were
there, is beyond all manner of Dis-
pute.

The Statute of *Westm.* the second, An- Rot. Stat.
no 13. E. 1. upon the 46 Chapter concern- fo. 28. &
ing taking of *Salmons*, a Record, tells us, 40.
was,

Rot. Par.
14. Ed. 2.
De inqui-
rend. de
Salmonibus
captis in
Com. Glou.
contra sta-
tutum.
Ma. West.
fo. 412.
l. 35.

was, *Statutum de Communi Consilio Regni*, ordain'd of the Common Council of the Kingdom.

The Historian expresseth this Parliament thus; *His temporibus convocatis potentioribus terræ suæ apud Westmonasterium condidit Rex statuta quæ Westmonasterii secundi dicuntur*; here the more powerful men of the Land were called or summoned to that Parliament, not a Syllable of the Word *Communitas*, or Commons but the Dr. will not deny, but that the Commons were part thereof; for, the 12 of E. 1. was about 21 years after 49. H. 2.

Rast. Stat.
fo. 47.
Rot. Claus.
8 E. 2. m. 8.

Anno 27. E. 1. The Statute of Fines was ordained, *De Communi Concilio regni*, yet no mention is made in the body, of the Assent of Lords or Commons, notwithstanding they gave their Assent thereto otherwise, it could not have been a Law or Statute; for, the Parliament of 15 E. 2. tells us, that the Statute of *Magna Charta* and other Statutes, were made by King, Peers, and Commons, and so this 27 E. 1. And there are Writs of Summons, *de Parlamento tenendo* to this Parliament, which *Mat. Westm. more Historico*, thus generally delivers, *Dominica secunda quadragesimæ citatis magnatibus regni apud Westmonasterium*, no Commons particulariz'd.

Rot. Parl.
15 E. 3.
n. 50. dors.

Rot. Claus.
27 E. 1. m.
9. dorso.
Ma. West.
fo. 431.
l. 48.

Anno 28 E. 1. The Statute called *Articuli
Chartar*, as a Writ upon the 2. Chap-
concerning Purveyors, proves, was or-
dained *de Communi Concilio regni*, by the
Common Council of the Kingdom.
The Dr's * Historian mentioning this
Parliament, writes in *Octavis Sancti Hilla-*
tenente rege Parliamentum suum Lincol-
Conquesti sunt Comites & Barones, not a
word of the Commons; yet, most certain
is, they were also there, as is evident by
the Writ of Summons and expences to that
Parliament, and the Sheriff of Kent's being
commanded to levy the wages for *Warensus*
Valoignes and *Henry de Appletresfield*,
Knights of the County, *nuper ad nos de prae-*
sentamento nostro usq; Lincolniam pro Comitatu
predicto venientibus ibidem nobiscum super
diversis negotiis nos & populum regni nostri
specialiter tangentibus tractatur to treat with
the King upon several Affairs, especially,
touching the King and People.

The Statute of 1 E. 3. was *de Communi*
Concilio regni Concordatum & Statutum in
Parlamento apud Westm. agreed and
acted by the Common Council of the
Kingdom, in a Parliament at *Westminster*.
As several other Records enumerate
the several parts thereof, *Per nos & Prae-*
sentatos Comites Barones & communitatem reg-

Rast. Stat.
fo. 49.

Rot. Pat. 7

E. 3. pars

prim. m. 21.

de inquirend

de diversis

provisoriis

Hospitiis

Regis.

* Mat.

West. fo.

433. l. 36.

Mr. Pryn,

4th part of

Parlia-

mentary

Writs. p.

12, 13. 16.

Rot. Claus.

29. E. 1.

m. 17.

dorso.

Rast. Stat. 1

fo. 64.

Rot. Pat. 1.

E. 3. m. 20.

Rot. Claus.

2 E. 3.

m. 20.

ni ibidem existentes, By the King, and Prelates, Earls, Barons, and the Commonalty of the Realm there being.

*walsingham, f. 126.
l. 28. & 29.*

Now, what saith the Historian? *W* thus he expresseth this Parliament: *P* *natale Regina cum filio suo ante festum Epiphania venit Londonias ubi cum magno gaudio & muneribus est suscepta convenit ei illuc tota Regni Nobilitas citata per primum parliamentum tenendum ibidem in Crastino dicti festi.*

But to press the Dr. with full weight shall afford him some presidents of Addresses to the whole representative Body of the Commons of England, as to *Walsingham* which took in all the Members before the supposed Conquest, or Nobles which was as comprehensive after.

*Rot. Parl.
11 H. 4. n.
36. Pur Joham. Bartrum.*

*Rot. Parl.
13 H. 4. n.
23. Pur Labbe de Furneys.
Pur Tho. Chaucer Esq; 2 H. 5. n. 18.*

*Rot. Parl. 2
H. 5. n. 47.
Rot. Parl 9
H. 5. n. 19.*

1. Tressages Communes.

A les Tressages Communes de cest present Parlement.

As Tressages Communes, &c. que pleust considerer les premisses, & prier à nostre Seigneur le Roy de grantier per Auctorite Parlement, &c.

In the like form, &c. Peticion par Mairs, Conestables, & la Compaignie de la staple a Caleys, directed as aforesaid.

As Tressages Communes supplie humblyment Lucie que fust la feme Esmond nait gairs Count de Kent.

Que pleise a voz Tressages discretions
considerer.

Pur le Countess de Marche, pleise a Tressages Communes. Rot.Parl.3
H.6. n. 29.

Pur John Lescrop Chivaler, in like manner. Ibid. n. 32.

Treshonorable et Tressages Communes.

Labbe de Nenenham against Monsieur Rot.Parl.4
Philip Courtney Chivaler. H.4. n. 12.

A les Treshonourables, & Tressages
Communes, de cest present Parlement sup-
plie treshumblement, &c. Upon which peti-
tion, and others assented to, after deli-
bered to the King and Lords, the Abbot
was relieved, and Sir Philip was adjudg'd
and awarded to the Tower.

As Treshonourables, & Tressages Com-
munes, &c. Rot.Parl.2
H. 5. n. 16.

Pleise a vostre Tressages discretions de
considerer & aussi prier nostre Seigneur le
Roy, de grantier & ordeigner en son dit Par-
lement peradvys & assent de toutz les Seig-
neurs Espirituelx & Temporelx, &c. Pur Thomas
Salman.

*Qua quidem petitione coram Domino Re-
& Dominis Spiritualibus & Temporalibus
existentibus lecta & materia in eadem
plenius intellecta idem Dominus Rex de as-
sensu Dominorum predictorum & ad requi-
sitionem Communitatis predictae, &c.*

As Tressages, & Treshonourables Com-
munes de cest present Parlement monstrent les Rot.Parl.8
H. 6. n. 51.

Mair,

Mair, Aldermans, & Communes de la Cite de Londres que please avoz Treslage & Tresprudez discretions considerer,

Rot. Parl. *As Tresgratious, & Treslages Sires Communes de cest present Parlement supplie tres humblement, &c. Quele petition lue devant le Roy, & les Seigneurs Parlement en entendue, & le dit Johan Beel Chivaler.*
Rot. Parl. 4 H. 5. n. 17. *Alleyn & autres.*

(a) Rot. Parl. 4 H. 4. n. 19. *(a) A les Treshonourables & Treslages Communes de cest present Parlement.*

Pur Monsieur Thomas Pomeroy Chivaler. *B. Honourables & Treslages Communes. (b) As Honourables & Treslages Seigneurs les Communes de cest present Parlement, &c.*

(b) Rot. Parl. 3 H. 5. pars 1. n. 7. *(c) As Honourable, & sages Communes pleise a vous honourables Sires considerer &c. La quele petition & bien concevee mesme le Parlement fuit respondu, &c.*

(c) Rot. Parl. 3. H. 5. pars 1. n. 9. *(d) Pleise a les Honourables, & sages Communes.*

Gentz de la Ville de Sandwich. *(e) Pleise as Honourables, & sages Communes.*

(d) Rot. Parl. 3 H. 5. pars 2. n. 36. *(f) As Honourables Communes, que pleise a vous Sages discretions de prier &c.*

Hospitalx. *(g) A les Honourables, & Treslages Communes supplie Sire William de Clynton, &c.*

(e) Rot. Parl. 4 H. 5. n. 19. *Pur Labbe de Fountaynes. (f) Rot. Parl. 5 H. n. 16. Pur le Duc Desastre. (g) Rot. Parl. 9. H. 5. pars 2. n. 11. Wilhelmo Domino de Clynton.*

As Tressages, & Treshonourables Com- Rot. Parl. 6
munes de cest present Parlement, pleise H. 6. n. 17.
avons Treshnables discretions de prier à no- Pro Johan-
tre Seignieur le Roy, &c. ne Harris.

Pleise à Tressages, & Honorables Com- Rot. 8. H.
manes, &c. 6. 29.
Rot. Parl.
15 H. 6.

4. Honorables & sages fires les Communes. n. 36.

As Honorables, & Sages fires les Com- Rot. Parl. 2
munes de cest present Parlement. H. 5. n. 51.

As honorables & Sages fires les Communes Rot. Parl.
de cest present Parlement supplient, &c. 4 H 5. Pur
la terre

5. Honorables, Treshonourables, Treshnables, Gra- Dirland.
cious, & Tressages Seigneurs les Communes.

A les Tressages, & Honorables Seigni- Rot. Parl.
eurs les Communes de cest present Parlement 2 H. 5. pars
supplie treshumblement, &c. 2. n. 22.

Pleise avoz Honorables, & Sages dis- Pur Mark
cretions gracieusement Supplier a nostre le Fevre.
Sovereign, &c. La quele petition lue en dit
Parlement & plenement entendue fuit re- (a) Rot.
spondu en manere qeu fuit, &c. Parl. 4 H.
5. n. 20.

(a) As Treshonourables, & gracieuses (b) Bun-
Seigneurs la Commune du cest present del Per.
Parlement, &c. Parl. 4. H.
4. Pur Bur-
geys de la

(b) As Tressages, & Treshnables Com- Ville de
munes de cest present Parlement. Lym.

SECT. 4.

FOR Confirmation of the Nobility of
such Commons as now are represent-
ed

ed in *Parliament*, I shall add the Authority of our great Master of Records.

The Design of his Book is chiefly to prove, that only Tenants in *Capite* were Members of the Great Council: but, finding all the Nobility there, he often extends it farther, to their Tenants by *Knights Service*.

One of his Arguments to prove that *Commoners* were not Members, is, because tho Records mention *Communitas* or *Milites*, (which takes in the Tenants in *Capite* and their Tenants by *Knights Service*) & *Fideles*, yet *Mat. Paris* has only *tota Anglie nobilitas*, or *magnates regni*. And, in short we are to understand, that all the Members were Nobles, which is a clear proof that when *Communitas*, or *Fideles* beside *Milites*, are mentioned to have been Members, those, though more than Tenants in *Capite*, and their *Knights*, were all Nobles. *Quod erat demonstrandum.*

Against

Jan. p. 54.

This alone, were sufficient to discover the Writers Ignorances, in that he hath cited Records and Histories directly against himself. And, he in effect, confesses, how he hath cheated his Readers, and abused and wrested the Records and Histories he hath cited. Where he has strained them to a contrary Sense.

ib. p. 63.

F I N I S.

**A
SPEECH,**

According to the

Answerer's Principles,

Made for the

PARLIAMENT

A T

O X F O R D,



L O N D O N,

Printed in the Year MDCLXXXI.

THE
S P E E C H

Will not say the Dr. has allowed
the being Advice of the Council

And what further Council of the
Council

Will you a year in the King's service
By your Grace's Council the way to a year

After he has taken his leave of the
the House of Commons with a letter

that took and a resolution to return
to the House of Commons

to the Council of the House of Commons

Cannot but congratulate of happy
meeting in this place, where the
every will reach. As to the
Factions, and divide each in
down that Henry, which

T H E
S P E E C H,

I Will not say the Dr. has followed
the biting Advice of the Satyrift,

*Aude aliquid brevibus Gyaris, & carcere
dignum*

Si vis esse aliquis —

“If you’l a *figure* in the Kingdom *make*,

“By *punishable* Crimes the *way* to’t take.

After he has taken his *demerited* Seat in
the *House of Commons*, with a *Magiste-*
rial look, and a *Professor’s* preparato-
ry *hem*, thus, methinks, he *addresses* him-
self to the *Chair*.

Mr. Speaker,

I Cannot but congratulate our happy
meeting in this Place, where the *Uni-*
versity will teach *Loyalty* to the most
Factions, and dispose them to *swallow*
down that *Remedy*, which, out of a
burn-

burning Zeal to bring into the World something suitable to the *Dignity* of my Professor's place, I am eager, and all *Passion* to communicate. My *Remedy*, in short, is a *Lenitive* to cure the raging heats of insolent *Parliaments*, which are too apt to value themselves upon their pretended *Antiquity*.

Letter to
the Earl
of Shafts-
bury.

Not loving *Idleness*, at vacant times from study, and Practice in my Profession, (as a diversion) I have with great Industry, and I may say it, some Judgment, examined Things done in this Nation more than a thousand years by past, with a continuation of them until three or four hundred years last effluxed.

Against
Mr. Petyt,
p. 29.

Though there are several Lawyers here, yet they have study'd, and know onely Popular and Lucrative Law, and not the Constitutions of the Nation before their own time. Concerning which, they may be content to hear my Reading.

Mat. Par.
set above
Record.
Against
Mr. Petyt,
p. 183.

The Records which they open, are of a nature far short of those upon which I have been poring these sixteen years : Nor must they pretend to that acquaintance which I have with Historians, whose Authority, I can, by my No heed to be taken to the old Monks and Historians. ib. p. 16. in Marg to the same purpose. ib. p. 43.

sedacious Inventions, advance, or depress,
as I see occasion.

Under the Saxon Government, the p. 6.
People were so far from not having their
Votes and shares in these Councils, as only
they had Voices in them.

If any more had, they were the
priests, but the Princes, Great Officers,
and Leaders, had no Voices at all ; for,
if they had, 'twould have spoil'd the
singular Democracy.

Of the many Councils by Mr. Petyt ci- p. 13.
ted, there is now to be found the word Po-
pulus, in the Title, Preface, or Body of any
of them, except in that spurious one of
King Ina : Yet, now I bethink my self, p. 15.
King Edward, surnam'd the Elder, cal-
led a Synod of English Nobility,
wherein Plegmund presided : Here his
own Author tells us, in few words, the
meaning of the long Title of this Synod,
which just before he had mentioned, viz.
That the Bishops, Abbets, Fideles, Proce-
res, and Populus were all Nobiles, No-
blemen. Whence some will infer, that
inferiour Proprietors were there as Nobi-
les, but 'tis without all colour of Reason.

And in the Grand League and Union ibid. p. 8.
between the Brittons, Saxons, and Picts, and 9.

per Commune Concilium, & assensum omnium Episcoporum, Procerum, Comitum, & omnium Sapientum Seniorum & Populorum; the *Sapientes, Seniores, and Populi*, are the Bishops, Peers, and Earls.

ib. p. 10.

The *Generalis Senatûs, & Populi Conventus, & Edictum*, is therefore the Assembly and Statute of the Great men.

ib. p. 11.

This affirmation of all needfull

Against
Mr. Petyt,
p. 13.

ib. p. 2.

The Law made à Rege, *Baronibus, & Populo*, had the like Legislators; and, I do affirm, that the word *Populus* is not to be found in any of these.

b. p. 24.

Thus I have wonderfully discovered the unsoundness of Mr. Petit's Assertions, (though it will be objected, I have jump't over several Arguments, and they material ones) concerning Great Councils before the Conquest. Upon which, it follows, that if the *Populus* were admitted after, it must be by the bounty of the Conquerour, who might, at pleasure, revoke his Concessions. For the Story of Edwin of Sharnborn, supposed to have enjoyed his Lands by a Prior Title, 'tis a famous Legend, and true Fable, though he had the King's mandat for Recovering his Estate.

Sir

Sir Edward Coke, who, to avoid the evidence that our English Laws were the Norman Laws, said, *The Laws of England are Leges non scriptæ*, said it precariously, without any Foundation or Authority. Besides, 'twas ridiculous, as if they were known by Revelation, divinely cast into the hearts of men?

ib. p. 30.

Against
Jan. 20.
p. 89.

Though some may impertinently ask me, Whether there were not Laws before Writing, and that without Revelation, or divinely casting into the hearts of men?

But that, if affirmed, is a palpable and gross Error.

Against
Mr. Petyt,
p. 167.

What though that Clergy-man-Lawyer Bracton agree with Coke, yet he spoke out of Ignorance or Design, when he said, *Absurdum non erit leges Anglicanas (licet non scriptas) leges appellare.*

Bracton,
l. 1. fol. 1.

William the Conquerour brought in a New Law, and imposed it upon the People.

Against
Mr. Petyt,
p. 29.

The greatest part of the Antient Law, as it was brought hither by the Normans, was exacted and observed by, and upon, only the Normans: For the English, they had no Property or Rights left: And so were all Outlaws.

ib. p. 43.

p. 176.

This Domesday-Book in every County shews, though 'tis said, several Englishmen are there mentioned, holding by Titles not derived from the Conquerour.

ib. p. 39.

p. 35.

And, for a farther proof of this, King William's Law to all the Freemen of the whole Kingdom, was made only to Tenants in Military Service, which were French, Flemings, Anjouins, Britains, Poictovins, and People of other Nations.

p. 39.

p. 39.

When this King, in the 4th of his Reign summon'd Anglos Nobiles, & Sapientes, & sub lege eruditos, to give an account of their Laws, 'twas a Sham Summons, for no English were Nobles, nay, none were so much as Freemen, but the Foreigners, amongst whom William divided the Kingdom, and therefore Strangers that had their Estates came in their steads, and gave an Account, upon Oath, of the Laws before their own time; as they us'd to do of matter of Fact, when sworn upon common Juries.

p. 51.

William the Second, and Henry the First were Usurpers and Traitors, notwithstanding the People's Elections.

p. 55.

Clerus and Populus are to be understood onely of Tenants in Capite,

ne-

never of the *inferiour* sort of People.

Wherefore, they dote who say that the *inferiour* Clergy, nay the dignified, not Tenants in Capite, came to Great Councils before 49 H. 3.

It's very true, that in our Ancient Parliament-Rolls, the Knights of Shires are sometimes called Grantz des Counties, or Great men of the Counties; and well they might, for, without doubt, they were most commonly the greatest Tenants in Capite under the degree of Barons in each County. And, for evidence of this, the Great Tenants in Capite that were no Barons; and, perhaps, the least Tenants in Capite, in the times of Ed. 3. and Ric. 2. are call'd autres grantz, or Grandes, autres Nobles, which were Barons, Peers called by the King's Writ into the Lords House at pleasure, and omitted at pleasure. Wherefore, 'tis to be observed, that the Knights for the Shires might well be Noble or Grantz, since they were call'd sometimes to sit in the Lords House; And whether they that were chose for the Counties, and did not sit in the Lords House, as Barons Peers, were Grantz or Nobles, perhaps may be a Question.

Against
Jan. &c.
P. 70.

Against
Mr. Petyt;
P. 116.
& 117.

As

As a choice piece of Learning, I must acquaint you, that though sometimes
 Glof. p. 15. *Fideles* signifie *qui in Principis alicujus potestate, & ditione sunt, qui vulgo subje-
 ti appellantur*; Subjects in general; yet, unless there be special matter to shew the contrary, 'tis meant of *Vassals*, who, having received Fees, are in the *Retinue* of some *Patron* or *Lord*; if in the *King's Retinue*, they are *Tenants in Capite*. So when we find Writs directed, *Omnibus Christi Fidelibus*. Here, when there is no more Subject matter to determine it, than when 'tis *omnibus Fidelibus Regni*, they must be our Saviour's *Tenants in Capite*.

Against
 Mr. Petyt,
 p. 125.

When the form of peace, in the 48th of H. 3. was by the Assent of the King, the Bishops, and the whole Community of the Kingdom, can any man say the Earls and Great Barons (these *Tenants in Capite*) gave not their Consents? They must be included in, and were a part of the whole Community of the Kingdom.

Against
 Jani,
 p. 71.

And indeed, to speak the truth, it is not denied against me, but proves their Notion to those Unwary Readers, whom they seduce to have some good opinion of their Fancies.

Though

Though that form of peace is said *Against*
 in the Record to be *Actum in Parli-* *Mr. Petyt,*
amento London, yet the *Prelates* and *P. 208.*
Barons were such as sided with *Mont-* *p. 120.*
fort, and the *Community* was the
Body of his *Army,* and the *Citizens* and
 other of the *Faction,* they were not the
Community of the *Prelates* and *Barons*
 onely, as at other times. Nay, here
 were the *Citizens* and others besides
 the *Army:* And yet the *Community* or
Body of the *Army,* took in all besides
 the *Prelates* and *Barons.*

And this must needs have been
 the *Army,* because 'twas after
 their *work* was over, that the *As-*
 sembly at *London* was. And the
Army it must be, though (as
 is idely objected) it is far from
 appearing that all the *Bishops,*
Earls, and *Barons* which consented had
 been in *Arms.*

Though they that were of the *Faction,*
 as is usual, caball'd together, and,
 as some will say, onely resolved upon
 what they would press the *King* to,
 they hereby *Statuebant, &c.* made *Laws*
 before the consent of the *King,* and all
 the

Mat. Westm. p. 394.
Postea convenienti-
bus Londini Præla-
tis, &c. partis il-
lius, quæ Regem su-
um tam seditio è te-
nuit captivatum.

the Bishops, Earls, and Barons, and, it should seem, before all were assembled, or could be a Parliament.

Against
Jan. &c.
p. 26.

Against
Mr. Petyt,
p. 125.

p. 126.
& 127.

And (which such as never intended to understand will make a wondring at) the Community was the Body of Montfort's Army, and the Citizens and others of the Faction; yet here, at this very time and place, the Community of the Kingdom of England must needs be the Community of the Barons, and Great men, Tenants in Capite by Military Service, and no other: Not onely because here was the Body of the Army, and Citizens, and others of the Faction, but because as is clear from an impregnable instance, (viz. of the same kind of Council which sent the Letter to the Pope in the Case of Adomar or Aymar de Valentia) besides the Earls, Noblemen, or Barons, Great men, there were the Tenants by Military Service, that held of, and attended the Barons and Great men; and when the King said, that though He and the Great men should be willing that Adomar, who withdrew himself out of the Kingdom, should return; tamen *Communitas ipsius*, which is the Community, not his, would not suffer his coming into England; the
Great

(II)

Great men were the Kings Friends, p. 121:
the Community his Enemies.

"So, that here are two Armies, the
"Great men, the King's Friends, on
"one side, and the Community, his Ene-
"mies on the other, which is just such
"another Council as that in the 48th,
"yet, without doubt, none of the King's
"Party or Friends were there.

Rot. Parl.

Though in the *Articuli Cleri* 9 Ed. 2.

42 H. 3.
m. 3. n. 9.

about fifty years after, we find Petiti-
ons presented by the Clergy, *temporibus*
progenitorum nostrorum quondam Regum
Anglie in diversis Parliamentis. Which

Against
Mr. Petyt,
p. 121.

includes the time of H. 3. Grandfather
to Edw. 2. At least, this was meant of

several Armies, and so was the *Parlia-*
mentum Oxon. but six years before the

Against
Mr. Petyt,
p. 192.

Military Parliament of the 48th: an
Army being a Parliament in the

sense and general use of the word at that

ib. p. 183.

time, that is, a great Assembly, Conventi-
on, or Meeting of the Faction and their

Army. And thus, in the 30th of this
King, the Parliament is call'd the Uni-

versity of the Militia, that is, of them
Qui militare servitium debebant, the Mili-

tes & Fideles.

It

It seems, in many of these *Parliaments*, or *Armies* (chuse you whether) the Clergy, in their Canonical Habits, address'd themselves to the Military men; upon which sort of *Parliaments*, they could not fail of prevailing with their *brutum fulmen* of Excommunication, and Ecclesiastical Scarcrows.

Against
Mr. Petyt,
p. 135.

Nota. To
lessen
their own
power.

ib.p. 226.

Ad sum-
mum hono-
rem perve-
nit ex quo
&c.

Against
Mr. Petyt,
p. 226.

What, is *Petyt* so ridiculous to have the *Commons* an essential part of the *Parliament* from Eternity? 'Tis plain, that the *Commons* began by *Rebellion*, because their *Constitution* was not forc'd by the *Barons* with their Swords in their hands, or promis'd to them then, but began from the King's pleasure, when the *Rebellion* was over, and the King was restored to his Regality, *Post magnas perturbationes, & enormes vexationes inter ipsum Regem, & Simonem de Monteforti, & alios Barones, motus & sopitas.*

And none but *Tenants in Capite* were *Barons* before, because then, and not before, the word *Baro* became a word of greater Honour, that is, appropriated to *Tenants in Capite* or their *Peers*; So that, before 'twas so appropriated, more were *Barons*. What

What though, in the Letter to the Pope, the *Mobiles portuum maris habitatores, necnon Clerus & Populus Univerſus*, are named, yet these troop of words were only to make an Impression upon the Pope, who, good man! knew nothing of the English Constitution, or what was done here, but would think all they were assembled in such a Great Council as other Parts of Christendom then had.

I shall not scruple to discover some mysteries to you: The *Liberi Homines* were Tenants in Capite, or at least, their Retinue and Tenants in Military Service, which were with them at Runnemedede. These *liberi homines*, or Free-men, were the onely men of Honour, Faith, Trust, and Reputation in the Kingdom. These were the Free-men which made such a cry for their Liberties, as appears by Magna Charta, most of which is onely an abatement of the Rigour, and a Relaxation of the feudal Tenures.

Nay, 'tis to them, these Free-men, onely, that the Grants were made: They that are there mention'd, holding of the King in Fee Farm, petit Serjeanty, free or common Socage and Burgage, held

Jani, &c.

P. 244.

Against

Mr. Petyt,

P. 157.

Glos. p. 26.

ib. p. 27.

Against

Mr. Petyt,

P. 39.

Vide King

John's

Charter.

Jan.p.181. held not so : But they all held by
 Knights Service, and so were the
 King's Barons. Of these Barons, some
 might be *Villains*, for that a *Tene-*
 ment or Possession neither added to, or
 Glof.p.10. detracted from the Person of any man, if
 free or bond, according to his Blood or
 Extraction. Nay, the *Freemen*, or *Tayns*
 Theyns were anciently no part of the
 Kingdom, for that was all divided in-
 to *Frank-pledges*, of which there was
 to be a general view in the Sheriff's
 Tourn ; but these *Frank-pledges* were
 all pitiful Fellows, bound with *Sureties*
 to their good behaviours, which the *Theyns*
 were not.. In after times, some might
 have had particular Charters of Exem-
 ption, or else, generally such of them
 as grew to be *Great men*, were excu-
 fed.
 Which
 answer his
 quotation
 out of
 Briton.
 Glof.p.31.

Against
 Mr. Petyt,
 P. 177.

Whereas Mr. *Petyt* contends, that the
liberè tenentes de Regno came to the Great
 Councils, 'tis a giddy Notion. Who-
 ever heard of *Tenure of the Kingdom*?
 " Though indeed we find in *Domesday*
 " Book, that such an one holds *de Co-*
 " *mitatu*.

Hereford-
 shire,
 Castellum
 de Cliford.

But more directly to the point. Such
 a Castle est de Regno Angliæ non subja-
 cet

(15)

et alicui Hundredo, neque est in consue-
tutine ulla. And, I'll warrant it, he,
with his *designing Interpretations*, will
render it, That this held not of the
Kingdom, but that it was of it, or in it,
and so were the *Free Tenants*. But, to
load this Opinion, according to the *lite-
ral meaning of the words*, *Omnes de
Regno*, which sometimes occur, all Copy-
holders, all Tradesmen, all Bondmen and
Villains, and all Servants, were Members
of Parliament. Yet, there having been no
Representatives before 49 H. 3. all the
Inhabitants of Cities, Burroughs, hold-
ing in Capite, or Chief, and several Towns
Corporate, not holding in Chief, came
to the great Councils in their own Per-
sons, which, some will say, made a great-
er Body than the *Inferiour Proprietors*,
and the Representatives of these Pla-
ces, and were Persons of as mean con-
dition.

Against
Mr. Petyt
p. 1.

p. 187.

For the Lords themselves, they have
no better, nor earlier Commencement
than the Commons.

Against
Mr. Petyt.
p. 228.

What King Henry a little before his
death begun, that is, to call such Earls
and Barons, *quos dignatus est*, such as he
pleased, Edward the First and his Succe-
sors

ib. p. 228.

Viz. The
rebellious
Barons,
who fra-
med the

new Government. p. 210.

Against
Mr. Petyt,
p. 229.

p. 210.

Camden,
cited

p. 226.

Cotton, ci-
ted p. 228.

sors constantly observed. This was the Constitution of the House of Lords, (the Lords made the Commons, and the King made the Lords.)

The Kings follow'd Montfort's Pattern, for calling the Commons to Parliament. Which yet was not Montfort's alone, for they (the rebellious Barons) fram'd and set up the new Government: After which, they sent out Writs in the King's Name, to summon a Parliament, with Commons as well as Noblemen. And yet, (according to two Authors, whom I receive) H. 3. set the Pattern, who, after the Victory at Evesham, wisely began in This what his Successors fortunately finish'd: And the King's beginning this, was a Reason why those Kings follow'd Montfort's Pattern: Though 'twas by the Power of Montfort alone, that is, of him and the other Barons, that the Commons were let in to the great Councils, to lessen the strength and power of the great Lords, that is, their own strength and power: yet it was by the King's Authority; though 'twas before the Bat-tel of Evesham, when Montfort prevail'd,

vet

(17)

yet it was done after, when the King recovered the *Regality*.

I shall come now to the particular consideration of *Janus Anglorum facies nova*.

The Author of which sufficiently shews his fantasticalness, in the Title of his Book, *Janus Anglorum facies nova* ! What, because his *Shreds of Antiquity* are thought doubtful, by some taken in one sense, by others in another, do's he therefore make *Janus bifrons* of his Composition ? He had as good call it a *Spread Eagle*, which looks both wayes too : I am sure it suits better with my Book, which is an *high Flyer*.

His Allusion to Selden's *Janus Anglorum facies altera*, will not justifie him, since that Antiquary was chiefly conversant in *Popular and Lucrative Law*.

Besides, the Title imports the *Novelty* of his *Opinion*, though, perhaps, he would have us believe, that he puts a *New Face* upon those musty old things, which have been thought to look with a different Aspect. Nor can he shrowd

R 2

him

himself under my Title, for mine is an old *Face*, which has honourable Scars and Flaws in it, and a *Professor's* Aspect; And *they* understand not *Railery* and *Figure*, who observe not how I expose him by the *Allusion*.

*Jan. Angl.
C. c. p. 22.*

He will have it, and brings many Arguments, amongst which, the Judgment of a whole *Parliament* of that famous King *Ed. 3.* but that is not *Infallible*, that the *Common Council* of the Kingdom, in King *John's* Charter, is onely a Council for *Scutage*, and *Aid* granted by Tenants in *Capite*. Whereas *Aid* sometimes signifies *such* as to be sure is granted by the greatest *Council*, and therefore does alwayes. Farther, What need was there to have the *Cause* of *Summons* declared, if it were onely about *Aids* and *Escuage*, or other ordinary business of course: though indeed, whether it was for *Aids*, or other *Business*, might not be known without this Declaration.

Against
Jan. C. c.
p. 10, 11,
12.

ib. p. 12.

Lastly, If all *Proprietors* were *Members* of the Great General Council, 'tis strange there should not have been the same care taken that they might be summoned.

Alas!

(19)

Alas ! What signifies the *Provision* of the *Common Law* ?

But he brings an Argument from the *Earl of Chester's* being a *Count Palatine*, and not subject to the *Feudal Law*; whereas he was a *feudal Tenant*: Though, I must confess, the old Doctor *Bracton* says, *Comites Paleys, Counts Palatine*, have *Regal Jurisdiction, salvo dominio Domino Regi sicut Principi*, saving to the King his Dominion as Prince, not as Lord of the *Feud*. Besides, in one of the Quotations which he brings to prove that the *Earl of Chester* however came to Parliament, he leaves out *Laici*, because it manifestly destroys his *Whimsey*: for it shews that all the *Laity* were *Tenants in Chief*, in that they, as a great Council, say, that the *Tenants in Chief* did owe no Service.

Against
Jan. &c.
P. 20.

Bracton
lib. 3. ca. 8.

Against
Jan. &c.
P. 17.

But he has another *fantastical* Notion, that this *Council* in King *John's* Charter was an *ordinary Court*. Upon which, he has these Arguments, which I put among his *Unintelligible Vagaries*, that there was a Court held thrice a year, which treated onely of Matters

Against
Jan. p. 26.

R 3

of

Vid. Jan.
&c.

Bract. l. 2.
c. 16. p. 37.
Consensu
communi
totius Reg-
ni introdu-
cta.

Against
Jan. &c.
P. 5.

of ordinary Justice, unless when 'twas united with the Great Council. And in these two Senses, taken together, was an Ordinary Court, that the Tenants were obliged by their Tenure to be there ; But at the Great Councils were more ; for which he cites Bracton, who speaks of several Unintelligible Businesses for which the Common Consent of the Kingdom was always required.

That to King John's Charter the *Liberi Homines totius Regni* were Parties, whereas, in truth, the Great Charters were onely the Petitions of the People drawn into the form of Charters, as Statutes now are, upon the Petitions of the Commons, drawn into the Form of Statutes, and pass'd, by the Concurrence of the King and Lords.

Since I am fallen into the Learning of Charters, I must inform you, that, though the Charter of H. 3. has the *inspeximus* of Edward the First, and is enrolled in the 25th of his Reign, in *ipsissimis verbis*, when 'tis confirm-
ed

(21)

ed, and ~~was made by King in~~
 full Parliament, ~~to have been~~
 made by the Common Assent of
 all the Realm, in the time of
 H. 3. nostre Pere, meaning the

Per commune assent
 de tut le Royaume.
 Rot. Stat. 25 Ed. 1.
 m. 38.

Father of Edward the First; and
 though (as appears in the Statute
 Roll) the Date and Witnesses were

of the time of H. 3. yet, this Great Charter was properly the Charter of Ed. 1. *Against Jan. &c. P. 63.*

or perhaps, rather his Explication or En-
 largement of that Charter of King John,
 and H. 3. for we find not the Great
 Charter, either of that, or King John's
 Form in any of the Rolls, until the 25th
 of Ed. 1. and therefore 'twas impossi-
 ble that any such Charter could be
 found in the 25th of that King, though
 he Reign'd so long since, (or indeed, that
 King John's Charter, was made by him.)

And there is Demonstration that 'twas
 not the Charter of H. 3. in that, when
 'tis confirm'd in Parliament, in the 15th
 of Edward the Third, ~~and~~

Rot. Parl.
 15. Ed. 3.
 N. 150,
 dor.

The Great Charter,
and the Charter of
the Forest, and other
Statutes made by our
Sovereign Lord the
King, and his Proge-
nitors, Peers, and the
Commons of the
Land. *Rastal Stat.*
15 Ed. 3. c. 1.

~~It is declared,~~
that 'twas made *Per le Roy,*
Peers, & Commune de la
terre, as other *Statutes*, made
afterwards, even as late as
Edward the Third, and, I
hope, I have satisfi'd every
Body, that the *Commons*, in

the sense as then taken, came not to
the *Great Councils* till the 49th of *H. 3.*
Whereas the Charter pretends at the
end, to have been made the 9th of that
King.

Nay, there is this farther Evidence,
that the Charter of *Henry the Third*
was not made in the 9th of *Henry the*
Third, and therefore not till the 25th
of *Edward the First*, though confirmed
in the 15th; which is, that *Matthew*
Paris himself, who explains *Records*
better than they can explain him, agrees
that 'twas made *presentibus Clero &*
Episcopis, cum magnatibus Regionis. So
that ~~it was not made by the Great men,~~ or besides
them, ~~the Commons of the terre,~~
rather, according to the order of the
word, besides the Clero, or Commons.

Mat. Par.
ed. Tiguri,
f. 311.

(23)

de la terre, were the *Great men*, Tenants
in *Capite*.

The Author, whom I now animad-
vert upon, has a Nonsensical Argu-
ment, that there were others obliged
besides Tenants in *Chief*, and that were,
or *had right* to be, of the *Common* Not Fact
Council of the Kingdom, though not onely.
upon the accounts mentioned in the *Vid. su-*
Charter; As *Falcatus de Brent*, who, *pra, cap. 1.*
by reason of great Possessions, was to
come, *etiam non vocatus*, and so
without the forty dayes Summons re- Jan. p. 13.
quired to the purposes there menti-
oned.

But this is *precariously said*. So he Jan. &c.
would also prove from the Charter of P. 89.
H. 1. that they who were Members of
the *County Court*, were to be summon-
ed to the *Great Council* upon the King's p. 34.
necessary occasions, or *de arduis*. But Jan. p. 14.
in this he *cheats and abuses his Readers*, Against
he produces a Statute in the Year 1427, Jan. p. 62.
(which falls within the Reign of *H. 6.*) and p. 63:
of the Neighbouring Kingdom of *Scot-* Jan. &c.
land, where the *Fendal Law*, to be P. 248.
true, had as great force as here, which
shews, that the *Free Tenants* came to
their

their *Parliaments* in their own Persons. But the *Scottish* Government neither was, nor is, the *English*, any more than every like is the same.

Jan. &c.
p. 214.

He shews us, that the *Nobilitas, Populusque minor*, was consulted about King *Henry* the First's Marriage, but he was an *Usurper* and a *Traitor*.

Jan. &c.
p. 241.

He urges, that Tenure in *Capite* was pleaded off, as a burden, which would not have been, if they could charge the rest in *Parliament*; some of which pleaded, that they could be Taxed onely with the *Community* of the *County*.

Though he cites an expresse *Record* before 49 *H. 3.* where, besides Tenants in *Capite*, two others are summoned for every *County*, to grant a Tax, I answer, though the Question is of *Fact* onely, that is, Whether more than Tenants in *Chief* ever at any time before 49 *H. 3.* came to the Great *Councils*, yet the History of this time and the occasion of this Writ, will give any reasonable man satisfaction, why they were summoned, which is, in effect, that they were not summon'd.

And

(25)

and indeed, this is a way of sham-
ing a Record, which I earnestly re-
commend, having often try'd it with
success; Witness my turning off ano-
ther Record with the Authority of
Matth. Paris.

Against
Mr. Petyt;
P. 183.

Whereas the *New Face-maker* takes
notice of the Complaint in a Parlia-
ment of Henry the Third, that all were
called according to the Tenor
Magna Chartæ suæ, which he contends
to be Henry the Third's Charter. And
therefore that they must refer them-
selves to the Clause which provides
for the Liberties and free Customes,
given of the *Villæ*. Henry the Third's
Charter was the same with King John's
and with Edward the First's; by the
force of which, the *Villæ* were certainly
provided for: But the Clause *ad haben-*
um Commune Concilium Regni is one-
thing in King John's; which is an Argu-
ment against me as unintelligible as that
Magna Chartæ suæ, was, of the then
King's Great Charter.

Against
Jan. P. 61.

Thus I have taught this *New Consti-*
tution and Upstart Society those weigh-
ty Truths, which had never blest the
World, but for my painful Search.

(Mr.

(Mr. Speaker,)

That we may not be too much humbled upon these Discoveries, we must consider, that the *House of Commons* began in the 49th of *Henry the Third* whereas the *Lords* came at the pleasure of that King, and even of the Successors of *Ed. 1.* and so are a much younger *House* in point of Settlement.

And, that no man may wonder at this my freedom, I must let them know that I am not of an *English* Extraction, but, by the Father's side, descended from a Noble *Poictouin*, and an *Anglo-jovin* on the Mothers, or some other who came in with *William the Conqueror*.

Myrmidonum Dolopum ve, aut duri Miles Ulissis.

Against
Mr. Petyt,
p. 252.

Berners
discharged from
being Knight of the Shire because *de Retinentia Regis*

And besides, am a Tenant in *Capite*, and also Head of a Learned Society, and also *de Retinentia Regis*, because of a certain Honour under him obtained by a special *Mandamus* : By reason of which

I could

(27)

could not by Law have been here,
 less it had been the King's Preroga-
 re, that who he pleased should be of
 the *House of Commons*, as well as the
 House of *Lords* : And indeed the Law
 may well be dispenc'd with, for the
 sake of so much Useful Knowledge, as,
 have communicated. And thus *libe-*
ri animam meam.

Against
 Mr. Petyt,
 p. 249.
 One Knight
 for a Coun-
 ty, &c. na-
 med to the
 Sheriff.

Auditum admissi risum teneatis amici !

F I N I S.

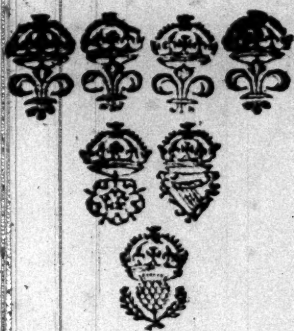
A D D I T I O N S

Answering the

O M I S S I O N S

O F O U R

Reverend
A U T H O R.



L O N D O N,

Printed for Edward Berry 1681.

(I)

A D D I T I O N S

Answering the

OMISSIONS, &c.

Since the Doctor thinks to flourish with some of his frivolous Omissions, like running his Sword through me after he had slain me in imagination; To shew that I am not quite killed, I shall venture to try the strength of his new whetted Animadverting Weapon, and give him a few home thrusts in exchange for his intended ones. Because I find him a gentle, and easie Foe, I shall advise him like a Friend,

*Frangere miser Calamos, vigilataque
prælia dele.*

Your miserable Scribling pray give
o're,
With such Polemicks vex the World
no more.

Against
Jani, &c.
p. 1.

Ib. p. 113.
and 114.

Jani, &c.
p. 26.

Quid, a
new Para-
graph.

Nor censure every thing as *Impertinent, Unintelligible, and Obscure*; that's above the level of your understanding. For proof of his great understanding he taxes three *Paragraphs* of mine with *Obscurity*, and that darkness which is in his own mind.

1. The first is, that *the City of London being charged with a Tallage, their Common-Council dispute whether it were Tallagium, or Auxilium, which is there meant of voluntary aid, not due upon the account of their Houses being of the Kings Demeasns; though indeed 'tis then shewn that they had severall times before been talliated. Quid est quod in hac Causâ defensionis egeat?* I must needs say I take all this to be so plain that I know not which part ought to add any light to. Is the difference between *Tallage* and a *Voluntary Aid* obscure? Or is it not well known that the Kings Demeasns only were talliated, and that the City having been talliated, 'twas in vain to urge that they paid only voluntary Aid?

But perhaps in the two next the *obscurity* may lye, and yet, by the Doctor's Art of multiplying faults, they may make

make three obscure Paragraphs.

2. This explains that part of the Charter, *Simili modo fiat de Civitate London, that is as in all Cases besides those excepted Escuage or Tallage should not be raised but by a Common-Council of the Kingdom, that is of all the persons concerned to pay; so for the City of London, unless the Aid was ordered in Common-Council, wherein they and all other Tenants in chief were assembled, none should be laid upon any Citizens but by the consent of their own Common-Council, and if the Ordinance were only in general Terms, that all the Kings Demesns should be talliated, the proportions payable there should be agreed by the Common-Council of the City.*

He adds
such to
Cases, to
render it
obscure.
Fani, &c.
p. 26.

Na. So if a
sum in
gross were
laid upon
them.

This consists of two parts; First, That where there was not the consent of a Common-Council of all the Tenants in chief, the Citizens might of themselves give a Tallage, which is not in dispute between us, but is with admirable ingenuity turned into an assertion, that Cities and Burroughs were not taxed or assessed towards any payments, but by their own Common-Councils, (which is not to be inferred

Viz. To
such pay-
ment as
Tallage.

Against
Jani, &c.
p. 113.

from the priviledge of one City, suppose it were so for *London*, nor can be gathered from my words, which yield that even *London* might be *Tax* or *Assessed* by the consent of the *Common-Council* of *Tenents*) or that they, as part of the *Common-Council* of the *Land* taxed themselves, which is true; but no man of sense can understand that to be the meaning of this part of the *Obscure Paragraph*, but that something farther was intended.

Indeed he
would take
in more
places.

2. The second I need not explain since he understands, for all his affected ignorance, that after a *Tax* was imposed upon the *City* of *London* the *Inhabitants* (or those who composed its *Council*) met to proportion it, so as it might be paid with as much equality as could be.

Na. the
King did
perhaps re-
quire a
certain
sum after
a general
Ordinance
made by
the Council
of *Tenents*
for a Ra-
tionabile
auxilium.
Jani, &c.
p. 26.

This he yields to my hand, that they always did if they would, it seems convinced by that Record, which shews that when the *Council* of the *City* would not agree to the *Sum* demanded by the *King*, 'twas *de voluntate omnium Baronum nostrorum Civitatis ejusdem*, that the *King* talliated his *Tenents* *per se*, or *per Capita*, so much upon every head.

3. This

3. This clears the last Paragraph which I need not recite, it having no meaning differing from the Record, but if my Record give not sufficient light and strength he, I thank him, according to his usual Curtesie cites one clear enough.

Dr. p. 115.

Et cum prædicti Cives nolissent intrare finem prædict' trium mille marcarum prædicti Thes. & alii voluerint assidere illud Tel. per Capita.

So that till the Citizens refused the the Sum in gross, the King did not Talliate each man in particular.

But I am told that *this is nothing to my purpose*, 'tis strange that he who blames me in other places for not quoting more than is *for my purpose*, when nothing behind makes against me, should now tax me for not skipping over any part of that Clause which 'twas needful to take and explain entire.

To clear up his understanding if possible, though I thought to have left this Task, I will obviate an objection which such as our Answerer may make, that 'tis *obscure* how the Record of the Common-Council of *London's* concerning its self about the Charge laid upon

the City should explain that part of the Charter which sayes *Simili modo fiat de Civitate London*, but surely practice is a good Interpreter of a Law, and there is this further evidence that here is provision for the power of the *Common-Council* of the City, because that holding *in Capite*, and being mentioned distinct from all the other Tenents there named in general, it must be for something else, besides that for which 'tis joyned with the other Tenents.

But *Excedimus tenebris in crepusculum*, from this *obscurity* and *darkness* to be felt by the Doctors *groaping* hand, we come to broad day light.

When in the 39th. H. 3. *Provisum fuit per Consilium Regis apud Merton*, that he should talliate his Demeasns, though this was after King John's Charter, which was intended to restrain the King from levying publick Taxes without publick consent; yet it seems to be plain by the Record that the King by the advice of his Privy Council taxed the City of London, even without the consent of the Common Council of his immediate Tenents, whom he

Against
Fani,
p. 115. &
117.

(7)

he makes the Common-Council for all manner of *Aid* and *Escuage*.

But it may be said, a Tallage was no publick Tax, though the Tax here spoke of, is made no more publick than the consent required to charge it; Which consent according to him, was from immediate Tenents only, so that *Tallage* might be a *publick Tax* as well as any other. And to be sure *Scutagium* concerning the Kings Tenents only, and the Cases in which the King reserv'd to himself power of taxing without publick consent in his sense, relating only to them; the *Tax* because of *tenure* must be provided for, as well as other, if any other were there meant by *Auxilium*, *vel Scutagium*.

Nay, he owns expressly, that according to the Law in King John's Charter, London and other Cities and Burghs were to be Assessed and Taxed by the Common-Council of the Kingdom. p. 117. &
118.

And he makes a reason of that provision, to be the usage in the time of H. 2. for the King to *Talliate*, or Tax them without such a Council.

The Doctor has doubtless the most particular convincing way of reasoning of

of any man, he says that *Law in King John's Charter intended to restrain the King from levying of publick Taxes without publick consent*: And the reason of this Article in King John's Charter is Argument sufficient to prove it: for, mark the weighty reason, *H. the Third* after this was granted, and *Edw. 1st.* taxed their Demeasns through *England*, though not the whole Kingdom by Advice and Consent of their Privy-Councils only until the *Stat' de Tallagio non concedendo*, That is (as *Tallage* is confest to be, a *Publick Tax*) because some of King *John's* Successors Tax't their Demeasns without publick consent. Therefore 'twas provided in King *John's* time, by way of Prophecy, that no publick Tax, Aid, or Escuage should be raised without publick consent.

So that what was done after, was a moral cause, or occasion of what preceded.

'Twill be said, that the thing that the Doctor went to prove was, that the Common-Council mentioned in the Charter was the Great and Common-Council of the Kingdom, to all intents and

and purposes. Not that the King was restrained from levying a publick Tax without the consent of the *Great Council*. But surely when he goes to give the reason why the Charter must be taken in such a sense, we are to expect the proof of that, not of something else, quitting the thing to be proved.

If I can understand his dark meaning, he was proving that *Nullum Scutagium, &c.* intended to restrain the King from levying publick Taxes without publick Consent. That is (to explain what he very obscurely drives at,) the restraint was only from Taxing the whole Kingdom; not from Taxing his Tenants in *Chief*. And the reason of this Article, viz. as taken in this sense, is, that several times after this Charter was granted, *Hen. 3.* and *Edw. 1.* Taxed their Demeasns through *England*, though not the whole Kingdom, by Advice and Consent of their Privy-Councils only, until the Statute *De tallagio non concedendo* was made 34 *E. 1.* And both *Richard* the First and King *John* had Taxed the whole Kingdom without common Assent, before the grant of *Magna Charta*. And when
he

Na. he
should
have ad-
ded only.
Nullum
Scutagi-
um, &c.

he has made good the Premises in this Argument for the meaning of the Article, which will be *ad græcas Calendas*, then, he may conclude that this Article intended to restrain the King; only from levying of publick Taxes without publick Consent, not to provide about *Escuage*, or *Tallage*, which none but his immediate Tenants were liable to. And from hence when prov'd, we might with some more colour and coherence raise the Consequence that the Common-Council mentioned in King John's Charter was the Great and Common-Council of the Kingdom to all intents and purposes. But how that should appear from the mention of *Aid*, and *Escuage* only, will be a Question.

'Tis by him observ'd of *Richard* the First, *Accepit de unaquâque carucatâ terræ totius Angliæ sex solidos.*

Bracton

Lib. 1. cap.
16.

But what proof is there from the word *accepit*, or the collecting of a Tax, *ex præcepto Regis*, that he took it without publick consent? I am sure *Bracton*, as good an Author as the Historian whom he Vouches, tells us *Carvage*, and such this was, could never be raised but *Consensu communi totius regni.*

But

(11)

But if the King in his Privy-Council might Tax the Kingdom its self, till the making King *John's* Charter, and was restrain'd then, I wonder our Reverend Author has made the Constitution of the House of Lords, that is according to him, the whole great Council, to have been no earlier than the 49th. of *H.* 3.

And unless such a Council as is mentioned in that Charter were Constituted before, how comes it to pass that the *Clerus* and *Populus*, which were of the Kings Council for making Laws, and giving Taxes, were not till 17. *Jo.* confin'd to such of them as were of the Privy-Council, as well as *Communitas populi*, after *Magnates* was meant of such people as were *Magnates*, and *Milites*, & *libere tenentes*, besides Barons, were the Tenents in *Capite*, who by their Acts oblig'd all that held of them by Knights Service: that is all the *Milites*, but not the *libere tenentes*.

We are taught that in the 6 of King *John* Tenents in *Capite* only, provided that every nine Knights should find a tenth for the defence of the Kingdom, and that they who were to find them were

Nay sometimes he Argues that it was not before, p. 56.

p. 110.

112.

113.

Against *Jani*, &c. p. 125, 126, 127.

were all Tenents in Military Service. Though the Record shews, that besides the *Miles vel Serviens*, *Alius terram tenens* was Charged with this. And he vouchsafes not to take notice of my Argument, that every Knight being bound by his tenure to find a man; if this had not extended to all that had to the value of a Knights Fee, though not held by Knights Service, it would have been an abatement of the Services due, and a weakning of the Kingdom.

Janl; &c.
p. 225.

Besides, admit that Tenents in *Capite* only laid this Charge, and only Tenents by Knights Service were bound by it, here is such a *Commune Concilium* of Tenents, as I say King *John's* Charter Exhibits, and no Charge laid by them upon others. Whereas he should have prov'd that they did oblige others without their consent.

But suppose Tenents only were Charged, why might not the Charge have been laid by *Omnes fideles* in my sense, as we find *Omnes de Regno*, taxing Knights Fees only?

p. 119.

The Doctor in his Margin gives us an admirable nota, that *Liberi* were
Tenents

(13)

Tenants in Military Service, or Gentlemen, Rustici Socagers, possessors or Freeholders in Socages only, which is as much as to say that Freeholders were not Freemen, unless they held in Military Service; and yet a Tenement, or Possession neither added to, or detracted from the person of any man, if free or bond before.

Glos. p. 10.

But surely Mr. Professor has some colourable proof for his remark here: For that let others judge.

Hoveden acquaints us with the manner of collecting a Carvage in the ninth of Richard the First, which was, that in every County the King appointed one Clergyman, and one Knight, who with the Sheriff of the County to which they were sent, and lawful Knights chose, and sworn to execute this business faithfully, *Fecerunt venire coram se senescalos Baronum istius comitatûs, & de qualibet villâ Dominum vel Ballivum villæ & prepositum cum quatuor legalibus hominibus villæ, sive liberis, sive rusticis, who were to swear how many Plough Lands there were in every Town.*

Galls M^llites.

If

Against
Mr. Petyr,
p. 36.

So Against
Jani. P.
36.

p. 78.

If here *liberi*, and *rustici* are not meant for two denominations of the same sort of men, that is ordinary Freeholders, I will leave him to fight it out with *Hoveden*, since he himself is directly contrary to the *old Munk*; *Hoveden* shews us that these Socagers were *legales homines*, such as chose *Juries*, and serv'd on *Juries* themselves, &c. but our new light is positive that *Tenants in Military Service* were the only *Freemen*, and the only *legal men*. Thus I have done right to his Omissions, passing by nothing which has not received justice before, and shall add some confirmations of what I have taken leave to assert in other places.

I had affirmed for one reason why the Doctor could have *small assistance* from *Domesday Book*, that the *Titles* whereby men enjoy'd their *Estates* are seldom mentioned there. And if I find by Record a whole County in the Doctors sense, that is all the Lands of the County enjoy'd by descent from before the imaginary Conquest; What will he say in justification of his *whymfies* upon the Conquest, and the authority he would fetch for it from *Domesday Book*?
He

He may please to consider, and give
Categorical Answer to this memo-
rable Record.

IN placito inter Regem & priorem
Ecclesie de Coventre de annua pensione
mi Clericorum Regis, ratione nove crea-
tionis ejusdem prioris quousque, &c. prior
venit & defendit vim & injuriam &
quicquid est in contemptu domini Regis,
&c. non cognovit Ecclesiam suam beatæ
Mariæ de Coventre fore Ecclesiam Ca-
bedralem nec ipsum priorem tenere ali-
quid de domino Rege per Baroniam prout
pro domino Rege in narratione sua pro-
ponitur. Et dicit quod tenet prioratum
prædictum ex fundatione cujusdam Leo-
frici quondam Comitis Cestrie qui prio-
ratum prædictum fundavit tempore san-
cti Edwardi dudum Regis Angliæ pro-
genitoris domini Regis nunc per Cartam
suam in hæc verba.

Placita co-
ram Rege
Hill. Anno
14 R. 2.
Rot. 50.
warw.

Anno domini incarnationis 1043.
Ego Leofricus Comes Cestrie Consilio &
assensu Regis qui literas suas infrascriptas
sub sigillo misit & testimonio aliorum re-
ligiosorum viroꝝ tam laicorum quam
clericorum Ecclesiam Coventre dedicari
fecit, in honore dei & Ecclesie sanctæ
B Mariæ

Mariæ genitricis ejus, & sancti Petri
 Apostoli & sancte Osburge Virginis, &
 omnium sanctorum; Has igitur viginti
 quatuor villas eidem Ecclesiæ attribui,
 ad servitium dei & ad victum & vesti-
 rum Abbatis & Monachorum in eodem
 loco deo servientium, videlicet Hamiton
 Newenham Chaldelesbunt Ichenton Ul-
 ston Soucham Grenesburgh Burtbenburgh
 Mersten juxta Avonam Hardewick Was-
 perton Creastorton Sotham Rugton di-
 midium Sowe Merston in Gloucestris præ-
 vincia Salewarpe in Wigorniensis Eton
 juxta amnem qui dicitur dea in Cestria
 provincia Kellesbye & Windwyk in
 Hamptoniensis provincia Borbach Bare-
 well Scrapstoste Pakinton & Potteres
 Merston in Leycestrensis provincia. Has
 autem terras dedi huic Monasterio cum
 Soca Saca cum telonio & theme cum liber-
 tatibus & omnibus consuetudinibus ubi-
 que Sicut a Rege Edwardo melius un-
 quam tenui. Cum hiis omnibus Rex Ed-
 wardus & ego libertates huic Monasterio
 dedimus, ita ut Abbas ejusdem loci Soli
 Regi Angliæ sit Subjectus.

Ibidem recitatur Charta ejusdem Regis
 Edwardi quas donationes & concessiones
 diversi alii Reges confirmaverunt & di-

rit quod postea per processum temporis
 nomen Abbatiæ prædictæ divertebatur
 in nomen prioratus, eo quod Leofwinus
 ad tunc ibidem creatus fuit in Episcopum
 Cestriæ & ordinavit per assensum Mona-
 chorum ibidem quod Abbazia prædicta
 ex tunc foret prioratus & quod Superio-
 res ejusdem Ecclesiæ forent priores suc-
 cessive in perpetuum, & dicit quod de
 ipso Leofrico, quia obiit sine herede de
 corpore suo descendente advocatio Ec-
 clesiæ prædictæ tempore Willielm' Con-
 quest' Angliæ cuidam Hugoni Comiti
 Cestriæ ut Consanguineo & heredi ipsius
 Leofrici, viz. Filio Erminelde sororis
 ejusdem Leofrici & de ipso Hugone cui-
 dam Ricardo ut filio & heredi & de ipso
 Ricardo cuidam Ranulpho ut Consangu-
 ineo & heredi, viz. filio Matildis sororis
 prædicti Hugonis & de ipso Ranulpho
 cuidam Ranulpho ut filio & heredi & de
 ipso Ranulpho filio Ranulphi quia obiit
 sine herede de corpore suo descendente
 advocatio prædicta simul cum Comitatu
 Cestre & Huntingdon & aliis diversis
 Castris Maneriis terris & tenementis
 cum pertinenti in Anglia & Wallia qui-
 busdam Matildæ Mabillie Cecilie &
 Margeritæ ut sororibus & heredibus præ-

Na. this is
 the Hugh
 to whom
 he ima-
 gines that
 William,
 gave all
 the Lands
 of the
 County of
 Chester.

dicti Ranulphi inter quas proprietia facta
fuit de predictis Comitatus advocatio-
nibus & Castris Maneriis terris & tene-
mentis cum pertinentiis supradictis. Et
predicta advocatio Simul cum toto pre-
dicto Comitatu Cestriae cum pertinentiis
allocata fuit predictae Matildae pro pro-
parte sua in allocationem diversorum
aliorum Castrorum Maneriorum terrarum
& tenementorum cum pertinentiis præ-
dictis Mabillicae Ceciliae & Margeriae se-
peratim allocatorum & de ipsa Matilda
descendebant predicta advocatio simul
cum prædicto Comitatu Cestriae cum per-
tinentiis post proprietiam predictam cui-
dam Johanni Scot ut filio & heredi præ-
dictae Matildae Qui quidem Johannes
Scot advocationem prædictam simul cum
prædicto Comitatu Cestriae cum pertinen-
tiis dedit Henrico quondam Regi Angliae
filio Regis Johannis & heredibus suis
in perpetuum, &c. prædictus prior sine
die.

This was a Judgment upon solemn
Debate and Tryal, and it cannot be
believed but the Judges, and Kings
Council so many hundred years ago,
knew as much of the right of the Con-
quest

(19)

quest as our Doctor can discover. 'Twill be said notwithstanding this Record, that *Hugh* had the Confirmation of his *Kinsman* the Conqueror.

Admit he had, he being his Kinsman would either thereby wheedle others in to the like acknowledgment of *Williams* power ; Or else having the Government of the County, would do this in complement to the supream Governour.

But that such Confirmation as to the Lands he had there, and all appendants or appurtenances to them was wholly needless, appears in that the Title is laid only in descent, nor does it in the least appear that *William* either granted or confirm'd more than the *Comitatus*, Government, or Jurisdiction of it, or that more than that was held by the Sword, which the Doctor makes *Tenure in Capite*. Let him shew how, by what manner of tenure his Land was held.

Not being aware that so great an Author as the Doctor would have condemn'd for *precarious*, all that I think I have prov'd from the Records and Histories which I cite for the foundation

Against
Jani, &c.
p. 89.

Jani, &c.
p. 264.

ib. p. 264.

Against
Jani, p. 4.

of my former Essay, *viz.* that till the 48. and 49th. H. 3. all Proprietors of Land came to the *Great Council* without exclusion. I had asserted that the *probi homines*, or *bonæ conversationis*, came to the *Great Councils* (which in common Intendment is meant of coming as *Members*) in their own persons, and when they agreed to it, which was no abridgment of their personal right, they came by Representation, and Election, and every one was there himself virtually by his Deputy, but they often met in vast bodies, and in capacious places, both in the Saxon times, and after William the First obtained the Imperial Crown.

Against
Jani, &c.
p. 89.

(I.) If you'll believe the *Chair* all this is *precariously* said, without *Foundation* or *Authority*; however 'tis granted that I seem to back it with an instance, where I say, *The whole body of Proprietors were assembled at Runemede between Stanes and Windsor, at the passing of King John's Charter.*

The Doctor refers us to p. 106. and 107. of his pretended Answer to Mr. Petyt, to see what this Assembly was, and of whom it consisted; where he proves

proves my Assertion, being all that he there shews is, that there was not time for *Writs to issue* to chuse any *Representatives* of the Commons, but not a word offer'd against their being there in their own Persons, having been got together expecting the Kings Answer to their Demands, who appointed a meeting at *Runemede*. The Record saith there were *Comites, & Barones, & liberi homines totius regni*, or according to that Expounder of more fallible Record *Ma. Paris*, there were the *Magnates*, which must there be meant of the *Nobilitas Major*, (unless you take them for the *Kings friends* only, as the great men of the Kingdom elsewhere) these *Magnates* had drawn to their side, and to that treaty, *Universam fere totius Regni Nobilitatem*, and this Nobility was so numerous, that they made a vast Army, *exercitum inestimabilem confecerunt*, and the Records not only shew that such as were but *liberi homines* were there, and parties to the agreement being *inter Regem, Comites, & Barones & liberos homines*, but the body of the Charter shews that Tenents by other free tenures, besides *Knights*

Rot. Pat.
17. Joh.
pars unica
m. 13. n. 3.
ib. m. 23.
dorso.
Against
Mr. Petyt,
p. 183.
p. 127. in
Marg.

Ma. Paris
fo. 244.

B 4

service

service were interested in it.

Besides this, the frequent meetings in so wide a place as *Ruenele* call'd *Pratum Concilii*, as I observed in the same page, is a strong Argument that vast bodies compos'd the great Councils in those days, and why Tenents in free Socage were not Members, as well as such as held of Subjects by *Knights service* I see no reason, but wait for the Doctors; In the mean while I shall present him with some other Authorities which shew that my Assertion was not precarious.

(2.) If in the 38th. of H. 3. the Commons, or *probi homines* were Members of the Great Council by Representatives of their own choice, and degree, there being besides all the Tenents in *Capite* two chose for every

Jani, &c.
p. 244. Vi-
de amongst
other Au-
thorities.

Jani, p. 51.
57, 58, 59,
60, 61. 66.
244. 248.

County, *Vice omnium & Singulorum*, and yet such came in their own persons both before, and after the making of King John's Charter, since which till the 48th. or 49th. of H. 3. no alteration in the way, or right of coming is supposed; then it follows that Representations were brought in when the Commons (who might have come

in

in their own persons) agree to it, and there being of the Councils before the Norman times and then, *Barones & populus*, 'tis not to be doubted but that they came in their Persons if they would, both in the Saxon, and Norman times, especially since *William* the First did but confirm the Law of the Confessor concerning the power of the Great Council, in words that shew'd that all the Members were in those ages stiled Peers, such as might come in person, and that inferior Proprietors were Members, the Law of the great *Folcmote* then received, proves beyond all dispute.

Rex debet omnia rite facere in regno & per judicium Procerum Regni Leges Par. Ed.

3. If besides *Barones*, and *Milites*, we find *Libere tenentes*, or *Fideles* in the account of Great Councils before 49 *H. 3.* we are to suppose, even without Consideration of the Capacious places of their Assembly, and the multitudes there, that such Proprietors of Land as would, came personally, till a Law or common practice to the contrary be shewn, it being according to their natural right, and the natural import of the words; besides the Doctor does not allow of Representations, except the

Jani, &c. p. 241. Against Mr. Petyt, p. 112. The free Tenents in Scotland, and the Possessors in Poland us'd to be Members of their great Councils without Representation.

Jani, &c.
p. 248. &
p. 66.

the Tenents in *Capite* who came without Election, were Representatives of the rest.

Jani, &c.
through-
out.

4. If King *John's* Charter does not exhibit the full form of our *English Great*, and most general Councils in those days, but, by continuing the rights of every particular place, leaves room for *Proprietors* of Land to have been *Members*, as well as Tenents in *Capite*, then the *libere Tenentes*, which many Records before the supposed change in the time of *H. 3.* mention as *Members* of the Great Councils, were not Tenents in *Capite*.

And as Tenents in *Capite* came in their own persons for matters concerning their Tenures; So, unless the contrary can be shewn, we are to believe that the *libere tenentes*, not holding in *Capite*, came in like manner, especially if we consider how mean were some of the *Majores Barones*, to whom special Writs were to be directed, as he that held part of the Barony of *Mulgrave*, *per servitium millesimæ ducentesimæ partis Baronie*. Nay I find *Norman Darcy*, who indeed held several parcels of the Manor of *Darcy*, which seem to be by several

Communia
de Term.
Mich. An.
39 E. 3.
Rot. 36.
penes Rem.
R. in scac-
cario.

(25)

veral purchases, amongst other shares holding *Centessimam partem Centessimæ Sexagesimæ partis Baroniam*. The hundredth part of the Hundred, and sixtieth part of the Barony, and yet that he who had only so much was *Baro Major* appears, in that the Common Law exempted him from being of a Common Jury as holding part of a Barony.

*Pent Rem.
Regis in
scaccario
de Term.
Pasche
29 E. 3.
Lincoln
de Re.
Brook tit.
exemption.*

Besides the Doctor yields that more than such as are expressly mention'd in the contested Clause, Tenents in *Military Service* of King John's Charter, viz. of Tenents in *Capite* were Members of the Great Councils, (which he does not always confine to the great Tenents) and some of these were as considerable, and as unfit for Counsellors as the generality of the *libere Tenentes*; for though he in his sixteen years search, could find no less a part of a *Knights Fee*, than a *twentieth*, yet in the last recited Record he may meet with the *sixtieth* part of one *Knights Fee* in the Manhor of Norton.

Against
Mr. Petyt,
P. 41.

5. Being all that were Members of the *Great Councils* in those times of which our dispute is, were *Nobles*, in which the Doctor and I agree, and the *Nobles*

*Jani, &c.
p. 32. 35,
36. 40. 57.
62, 63, 64.
66. 185.
219.*

Nobles came in their own Persons, the *libere Tenentes*, *part of the Nobility* were personally present.

Indeed Corporations holding *in Capite* might well come by Representation, being they were but as one *Noble*, and one *Tenant*, and would have been an unweildy body to move to Council united as their interest was.

(6.) King *John's* Resignation was void, because 'twas without the consent of the Commons, *Sanz leur assent*, and to say that this is *without the assent of a general Council*, Colloquium, or Parliament, *in those times when it was done*; unless he yield the same sort or degree of men to have been *Members* of the Great Councils formerly as then, does not take in the full meaning, but is to say nothing, being the Commons manifestly assert their right, as when they declared that they had *ever been* *Assenters as Petitioners*. And what force does it bring to the Doctors Assertion, that the Commons answer *in the same form of Speech conceiv'd by the Barons*? Which he thinks worthy of great Letters, is that an Argument that the

Commons

Against
Mr. Petyt, a Member of Parliament, and as well
p. 133.

ib. p. 140.

Commons did not think that they ought to have been parties? He himself grants that King *John* resigned before them that came upon a *Military Summons*; that is (as all who ought to come were concluded by them that came) before all his Barons; wherefore nothing wanted to the Confirmation, but the Consent of the *Commons*.

Against
Jani, &c.
p. 22, 23,
24.

And if the *Commons* were then an essential part of the Great Council they might come in Person, unless the change in 49 *H. 3.* can be shewn to have been any otherwise than in the bringing in a Representation of them.

Vid. the
12th. head.

(7.) By the Charter of *H. 1.* for the King's *dominica necessaria*, or *de arduis Regni*, all the Counties and Hundreds, that is the *Freeholders*, the Suitors at those Courts were to be summon'd to the *Great Council*, as it had been in the time of the Confessor, when there repaired to the *Great Folcmote*, or *General Council* held once a year, all the Peers, Knights, and Freemen, at least *Freeholders* of the Kingdom.

Jani, &c.
p. 34.

(8.) For demonstration that *libere tenentes* came to the Great Councils in their own Persons, and as Members;
King

King John before the passing of his Charter, writes to the *Milites, & Fideles*, (the last of which takes in all the *libere tenentes*) and tells them that if it might have been done he would have sent Letters to every one of them; wherefore these Members whose right is here acknowledged were single, individual persons; for they could not have been summoned to come by Representation in the case of such particular Writs, or Letters, unless the Representation were settled before the Summons, which is not to be supposed. These Arguments all but the last, which the Doctor has supplied me with, arise out of my former Treatise, and I take it that this which the Doctor has occasioned, will yield a few more without pressing.

V. *Domesday, &c.*
Besides
 (according to the terms first agreed on) he received the Confessors Laws about this *Folcmote*.
Confutatio-
on, p. 33.

(9.) Since William the First was no Conqueror, it follows that the Great *Folcmote*, or General Council in the Saxon times, where to be sure all Proprietors of Land were to be Members, could not have been turn'd into an Assembly of the Kings Tenents upon the old legal Title, (and without a Conquest there was no other.)

And

And as there must have been a vast number of the Proprietors whom the Kings immediate Tenents could not oblige; so they must have been *Members* of those *Councils* which laid any general Charge, and that with the same priviledges the Tenents *in Capite*, who came in Person, had.

(10.) Though demonstration it self will not satisfie unreasonable men, yet not to mention more I shall urge the Authority of the Legier Book of *Ely* Jani, p. 41. before cited, (the great Antiquity of the hand writing of which is beyond all exception) to persuade the Doctor that my Notion is far from being *precarious*; Since that *M. S.* shews that King *Stephen* consulted about the State of the Kingdom, not only with the Bishops, Abbots, Monks, and inferior Clergy, but with the *Plebs*, and they in an infinite number, *Concilio adunato Cleri & populi, Episcoporum, atque Abbatum, Monachorum, & Clericorum, Plebisque infinitæ multitudinis, &c. de statu Regni cum illis tractavit.*

This single instance is sufficient to Against prove that the *Primates, Primores, Proceres, Magnates, and Nobiles*, were not Jani, p. 62.
the

the Constituent parts of Great Councils in the Reigns of W. the 1st. H. 1st. King Stephen, H. 2. R. 1st. according to his restrictive and limited understanding and exposition of these words and phrases; but that the CLERUS and POPULUS (the general words which often comprehend all the Members) signify as well as Great Men, the Common Freeholders, as at this day; nor need I examine his Book any farther: but I hope the Doctor, a man of that known integrity, as his excellent Book expresses him to be, will now make good his promise to be of my opinion; when I should evince that Common Freeholders had this great privilege.

p. 62.

(11.) The Lords' right of answering for their Tenents being founded in the imaginary *feudal right*, which is made to extend only to Tenents by *Knights Service*, the *Socagers*, being free from that Law, could not be charged without their own consent, and that given by word of their own mouths, if they pleased.

Jani, &c.
p. 248.

(12.) The Authority cited by Mr. *Cambden*, and approved of by our Author as well as by me, shews that the only

(31)

only change in the *Great Council* was
 in leaving out of the special Summons
 what *Earls and Barons* the King pleased,
 but the right of all other Barons, as
Singular Persons, to share in the Le-
 gislature was preserv'd by the *alia illa*
via, by which the Representatives
 for the Counties came, and being all
 the Members of the *Great Councils*, but
 Citizens and Burgeses, or all such Ba-
 rons as aforesaid, came before the
 change in their own Persons, and no
 new kind of *Members* were then Crea-
 ed, and yet there was a substantial
 alteration, a new Government fram'd
 and set up, this alteration must consist
 in the *Commons*, or *Barones Minores*,
 their being put to Representatives when
 before they came Personally.

Against
 Mr. Petyt,
 p. 226.
 ib. p. 228.
 Confutati-
 on, p.

Against
 Mr. Petyt,
 p. 210.

(13.) I could bring many Argu-
 ments from the Doctor, as, besides o-
 thers, that the *Universitas Militia*, or
militare servitium debebant, that
 as Record explains, *Ma. Paris*, the
Indeles besides *Milites* were Members
 of Parliament, but I may spare farther
 proof till he gives me fresh occasion.

Against
 Mr. Petyt,
 p. 183. &
 192.

C

(14.) And

Against
Fani, &c.
p. 34.
Yet this
tenure
came in
with Will.
1st.
Against
Mr. Petyt,
p. 31.

(14.) And possibly then amongst his other *marvellous discoveries*, I may have time to animadvert a little more largely upon his fancy, that the *Suitors in the County Court* were all *Tenents in Military Service*, except *Barons*, both in the *Saxon and Norman times*; by the way you must understand that the *Barons* were not *Tenents in Military Service*, though they held in *Capite* by *Knights Service*. And that *William the First* made no alteration of the *Government*; for *Tenents by Military Service*, were the only *legal men*, and the only *Members of the Great Council* before.

Glof. p. 26.

But as *Tenents in Capite*, and their *Tenents in Military Service* were of the *Great Councils in Person*, all the *Suitors at the County Court*, who were according to the *Charter of H. 1. quod liberas habent terras*, in each *County* respectively, were there in *Person as Members*.

Against
Mr. Petyt,
p. 43.

Though not relating to the foundation of my Essay, according to him who makes the *Question* about the *Conquest*

(33)

quest not directly to reach the Contro-
 versy between us, I may make a little
 support with his Arguing that *William* 1st.
 gave whole Counties to his Followers,
 under the word *Comitatus*, that is as
 he renders it, all the Lands in the Coun-
 ties, and yet that besides whole Counties,
 he gave a great proportion of Lands
 in them.

Against
Fani. p. 15.Against
Mr. Petyt,
p. 29.

Glos. p. 8.

But since he taxes what I lay for the
 foundation of my Essay for precarious,
 let's see a little whether he does not
 render his own so, where it opposes
 mine. His whole Book in that respect
 resolves its self into these three Heads;

1. That King *John's* Charter in affir-
 mance of the Law imposed by *William*,
 in force before, declares that the Te-
 nants *in Capite* were the only Members
 of the General Council of the King-
 dom.

2. That from thence to the 49 *H.* 3.
 the practice or fact was for Tenants only
 to compose the Great or General Coun-
 cil.

C 2

3. That

3. That none but Tenents *in Capite* were Nobles.

(1.) If he himself yields that till King John's Charter there was no such Council as one made up only of Tenents *in Capite*, he thereby renders all under this head *precarious*, but this he does in two places at least. One where he urges that if the *Curia Regis Ordinaria* which I say was the Court of the King's Tenents, and Officers exclusive of others, went off by reason of the Clause in King John's Charter, it certainly went off before it began, that is, such a Court began not before; and agreeable to this he says, that after the granting of this Charter by King John there were many General, and Great Councils, or Colloquiums summon'd by Edict according to the form there prescribed: that is, as he will have it, after that the Tenents *in Capite* only were summon'd to the Great Council, but not before, for the Court began this form.

Against
Fani, p. 46.
& 47.

ib. p. 22.
& 23.

In another place (though he charges upon me what are his own words) he says King John resigned his Crown the 15

of May in the 14th. of his Reign, and he granted the great Charter of the Liberties three years after on the 15. of June in the 17. of his Reign, and therefore could not resign it in such a Council as was Constituted three years after his Resignation. And 'tis a question whether he asserts not this in a third place, where he affirms that before this Charter the Kingdom had been Taxt by our ancient Kings, and their Privy-Council only.

Thus p. 48. & 49. he charges Mr. Petyt and me for averring that even Servants who are not in a legal sense people of the Kingdom were Members of the Great Council.

(2.) But in truth he not only yields that the Tenents in Chief were first made the General Council by King John's Charter; but that after that, more than such were Members, not only the Tenents in Military Service, of Tenents in Chief, but other ordinary Freeholders. So that he submits himself to be goard by both the horns of that Dilemma inforc't in my former Treatise, viz. that King John's Charter was either declarative of the Law as 'twas before, or introductive of a new Law. And yields the precariousness of his own vagaries.

My words are in such a Council as this here. Jani, p. 15. which is as much as to say that there was such a Council as this before. p. 118. Against Jani, p. 66. Jani, p. 236.

(3.) But does he not own that the

Notion that Tenents in Capite only were Noble, is precarious? Since he yields that no kind of tenure does nobilitate, or so much as make a man free who was not so before according to his Blood or Extraction.

Glos. p. 10.

Though, according to this, one that held of the King in Chief might have been a Subjects Villain, yet none that held a certain Estate of Freehold could be a Villain, because 'tis contrary to the nature of a Freehold, that it should be so no longer than another pleas'd, that is only an Estate at will.

Against
Mr. Petyt,
p. 1.

He will have it that Mr. Petyt is guilty of some horrible Design, from the effects of which it seems this mighty Champion is to rescue the Government.

Against
Jani. p. 71.

And for me I am a Seducer, one who would seduce unwary Readers, a malicious insinuation, as if I would wheedle to my side a party against Truth and the Government; but whether he who would set aside the evidences for the Rights of the Lords, and Commons, or they who produce them fair, and would render

(37)

render them unquestioned, is guilty of the worst *design*, the World will judge; and I doubt not, but he has at home a thousand Witnesses, who, if he will hear their unhyast Testimonies, will inform him whose are the *groundless and designing interpretations*.

*Conscien-
tia mille
testes.
Against
Mr. Petyt,
p. 1.*

But I must confess they are so weak *ib.* that *these sacred things* need very little help *to rescue* them; especially since their Enemies are so far from agreeing amongst themselves, that 'tis more easie to conquer than to reconcile them.

As on Mr. Petyts, and my side, the *design* can be no other, than to shew how deeply rooted the Parliamentary Rights are; So the Doctors in opposition to ours, must be to shew the contrary, (a *design* worthy of a Member of Parliament) and 'tis a Question whether he yields these Rights to be more than *precarious*.

For according to him the Tenents *in Capite* were the only *Members* of the Great Council before 49 *H. 3.* and if others were after, 'twas by Usurping

ib. p. 210. upon the Rights of Tenants *in Capite*,
ib. 42. who, and not others, when the new
How were Government was set up, began to be Re-
Cities and presented by two Knights for every Coun-
Burroughs ty, out of their own number, and they
holding in at first, that is then, Elected their own
Capite Re- Representatives; and yet these Tenants
presented in Capite might be set aside if the King
according and his Council pleased, nor was any
to this? power given to others to chuse till
And how 10 H. 6. c. 2. which gave no new
came they power, and the Lords depend upon the
ever to be Kings pleasure. Therefore what the
Represent- design is, and at whose door the crime
ed? of it lies, the thing it self speaks, tho
 I should be silent.

*ib. p. 79.**ib. p. 42.**ib. p. 227.**&c. 228.*

Against
 Mr. Petyt,
 p. 249.

But for fear he should seduce unwary
 Readers, I must observe his Artifice in
 imposing upon them the belief that as
 it has ever since 49 H. 3. been at the
 Kings pleasure that any Lords came to
 the Great Council; so the King could of
 right name to the Sheriff what Repre-
 sentatives for the Counties, Cities and
 Burroughs he pleas'd, as he observes in
 the Margent upon a Record 31 E. 3.
 but he is not so Candid to observe, that
 though indeed at that time there was
 such

(39)

such a nomination, yet that was not to any Parliament, or to make any new Law, or lay any kind of Charge upon the Nation, or particular men; but was a Summons of a Council to advise how what was granted by full Parliament, legally Summon'd, might be best answered *juxta intentionem concessionis prædictæ*, and in such Cases the Judges only, who are but Assistants in Parliament, might well be consulted; but *pro magnis & urgentibus negotiis*, (as when King Charles the First called the *Magnum Concilium*, or Great Council of Peers to York, upon the Scotch Rebellion) the King call'd more to Advise with, and the Counsellors might well be of his own Choice.

An. 1640

'Twill be urg'd that when the King appointed but one for every County, they were impowr'd to consent to what *de Communi Consilio contigerit ordinari*, and that such a Council made Laws, as the Statute of the Staple made the 21 of E. 3. to which the answer is very obvious, that they made only Ordinances, not Laws, and that these were *Magna Consilia*, taken in a sense totally different

p. 242.

26 E. 3.

p. 246.

27 E. 3.

28 E. 3.
c. 13.

Rot. Par.
3 H. 6. n.
12.

rent from the *Generalia Concilia*, or *Parliaments*, and all this appears above the power and subtilty of our learned Doctors Evasions, in that the Record cited by himself in the 26 E. 3. calls the Assembly they are Summon'd to, *Concilium* only, and an Act of Parliament in the twenty eight of that King calls what was done in the twenty seven *Ordinances*, and that meeting a *Great Council*, *Magnum Concilium*; but such a Council it was, and its Resolutions such meer *Ordinances* (the distinction of which from Acts is well known) that that very next Parliament finds it needful to confirm, and give them the force of a Law. Agreeably to this the Earl Marshal in that grand Case in the 3 H. 6. pleads, that though a determination hadde be made against the said Earl Marshall in great Council, though he hadde be of full age, that might not disherit him without Authority of Parliament, these are uncontrollable evidences, and proofs against him, let him to save the great Credit of his Learning answer them if he can.

But who is the new Government-Maker,

ker, and new Parliament-Maker, perhaps one might know from himself when he has considered a little better, and then he may think the Government, as 'tis now establisht, mightily concern'd in his Errors.

Perhaps 'twill be said I injure this good man in imputing to him a design in relation to the present Government; Since he owns that the most excellent great Council, (and goes to prove it evidently from Records) received its perfection from the Kings Authority, and time. But 'tis obvious that its Perfection, must be meant of such its Perfection, as his Book allows, and he would make evident, but what is that? That Lords should, to the time of his excellent discoveries, be Summon'd to Parliament, or pass by, at the Kings pleasure, and that if the King pleas'd, he might Summon one Knight for a County, one Citizen for a City, one Burges for a Burgh, and those nam'd to the Sheriff.

Against
Mr. Petys,
p. 229.

ib. p. 227.
& 228.

ib. p. 249.

And this design will be very evident if we observe his aery ambuscade, to
return

return his own phrase, and meer juggle in joyning *the Kings Authority and time* together; we think we have something, but by an Hocus Pocus Trick 'tis gone; for admit that *its Perfection* were such as we say it has at this day, *viz.* for Lords to come of Right in their own Persons, and that the Commons should send Representatives of their free Choice. Yet let us see what settlement he gives this *Great Council*, for which purpose we must divide the two Authorities, which sometimes may differ.

And (1.) Suppose that though time would preserve that power which the *Great Council* exercises, a King would hereafter take it all to himself, and make Laws by a Council of his own chusing, or without any. If the Doctor allows this power, doubtless the next Parliament will thank him.

(2.) Suppose that without, or against the Kings Authority, *time* only would establish this *Great Council*, can this be done? He that affirms it surely will

will be no great friend to Prerogative,
nor understands he that Maxim,

Nullum tempus occurrit Regi.

And one of these must be clos'd with.

'Twill be objected that I am as injurious to Prerogative in arguing that some Lords may have a Right of Prescription to come to the Upper-House.

But I think no sober man will deny that there is a right either from Writs alone, or from Writs as prescribed to, and 'tis strange that it should not be against Prerogative to urge a right from one Royal Concession, and yet it should be to urge it from many; but farther, if they who had no right to come in Person, or be Represented in Parliament, should by colour of Prescription put themselves upon the King for Counselors, this were derogatory to the Prerogative. But if there be a natural right for *Proprietors* of Land (with whom some say is the ballance of power within this Nation) to be interested in the Legislature, which I ^{need} not affirm.

Or

*Rex debet
omnia rite
facere in
Regno &
per judi-
cium pro-
teram Re-
gni.*

Or if there be such a positive right, not only from the Laws for frequent Parliaments, which suppose such to be *Members* as had been, but more particularly from the Law received in the 4th. of *William* the First, and by positive Law or Custom the King us'd to send special Writs for some, general for others; the Prescribing to special Writs, which is not of Substance as to the Legislative Interest, is no diminution of Prerogative; because no more in effect is out of the King than was before, which is, that this man should one way or other have a share in the Legislature.

If this Solution of mine will not pass I cannot help it, I am sure the Law for a right grounded upon one or more Special Writs of Summons, stands fast, though the reason of it should be above my reach.

*Above all
vid. Title
page
Against
Mr. Petyt,
& p. 81.*

Having run through a Book so ill-natur'd to the Government, and so impotent in its settled anger, as that which some may think to have no other design, than that of exposing Mr. Petyt and me, the one for *Artifice*, *unhandsum dealing with*, and false application of Records,

(45)

Records, &c. the other amongst other things, for *Ignorance, Confidence, and Cheating his Readers*; I may hope notwithstanding the disparity of years, and the dignity of his place, to be very excusable in using our Answerer with no more respect.

When a man renders himself cheap by his folly, and yet meets with many so weak that they are discipled by him, to notions of dangerous and pernicious consequence to the State.

—— *Ridentem dicere verum,*
Quis vetat? ——

In summing up the *Product of his many years labours*, which my Preface charges him with, perhaps it may be thought that I omitted one considerable Head; however I leave to others if they think fit to add for a seventh.

That both Lords, and Commons may be depriv'd of all Shares, or Votes in making of Laws for the Government of the Kingdom, when ever any future King shall please to resume the Regality.

Some

Some perhaps may add an eighth;
That the Parliaments are nothing but
Magna Concilia, such as are called only
to Advise upon what shall be given in
direction, but no consent of theirs re-
quired to make the Kings determination
a binding Law.

And *Vice Versa*, every Great Council,
1640. such as that call'd to York, is a Parlia-
ment.

Dox. H. W. C.

F I N I S.

E R R A T A.

PAge 12.l.6. add *Drs.* before *interdicts*. p.15. in marg. add p.239. p.16.l.11. read *vicinata*. p.18.l.10. r. 25. p.28. l.12. r. in *Chief*. p.39.l.5. r. had. p.47.l. 21. r. *indueri*. l. 23. r. *deposceret*. p. 85. in marg. dele *Shire* after *Cambridg*. p.100. l.17. r. *Sharnborn*. p. 110. in marg. towards the bot-
tom, add *Domesday*. p.124. l.6. r. *paragio*. p.133. l. 24. add and according to their *Chattels*. p.139. add of before a title. p. 151. l. 13. r. *conticuissent*. p.156. in marg. r. *Lords for Knights*. p.163. l.2. r. *fit*. l. 10. r. *integra*. p. 201. l. 8. r. title.

In the *Additions*:

Page 8. l. 5. r. article. p. 23. in marg. *Legis Sancti Ed.*
p. 25. l. 12. r. of King *John's Charter*, viz. *Tenants, &c.*
ib. l. 25. r. *Nocton*.